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Place:

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Date:

[1934]

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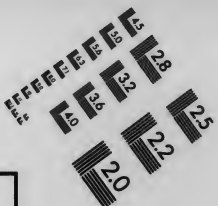
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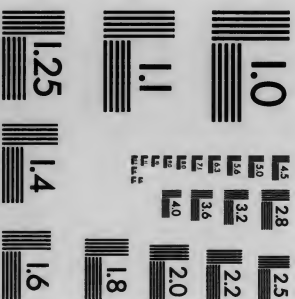
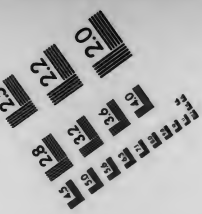


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U.S. Nat'l recovery adm.

Hearing on the wholesale drug trade, informal
conference, May 18, 1934

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Volume 1

NATIONAL INDUSTRIAL RECOVERY ADMINISTRATION

HEARING ON

THE WHOLESALE DRUG TRADE

- Informal Conference -

May 18, 1934

JESSE L. WARD

of WARD & PAUL

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WHOLESALE DRUG TRADE

May 18, 1934

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NATIONAL RECOVERY ADMINISTRATION

Washington, D. C.

INFORMAL CONFERENCE

on the

WHOLESALE DRUG TRADE

May 18, 1934.

The above entitled matter came on for hearing at 2:00 o'clock p. m., in the Washington Hotel, Assistant Deputy Administrator Merrell presiding.

There were present also:

S. S. Rittelle, Aide to the Assistant Deputy
Administrator;

A. A. Kimball, Aide to Doctor Dameron;
Of the Labor Advisory Board:

Joel Berrall;

Of the Consumers' Advisory Board:

H. C. McCarty.

P_R_O_C_E_E_D_I_N_G_S

Assistant Deputy Merrell: As I understand, the committee met this morning and they have gone over this draft.

I guess the best way to proceed would be to go through the code.

Did the committee pass on the draft?

Mr. Williamson: The committee has been in session since this morning at ten o'clock and has gone through the suggested redraft of the code dated May 17, 1934, and have gotten down as far as page 11 of the code, or down to powers and duties of the code authority, and we have discussed it in connection with the code as submitted under date of May 1st, and as part of the report of the sponsoring committee of this meeting in New York which was submitted to you -- this meeting was held May 3, 1934, and the further meeting with you and Mr. King with you in Washington.

It appears to us, in going through the code as submitted on May 17th, that many of the requests or suggestions that we made, growing out of our meeting in New York have even been ignored and not embodied in the suggested draft of May 17th, which, to some degree, was a disappointment to the committee.

Now, having gone through the code as far as page 11, inclusive, we are prepared to take the matter up with you, either seriatim or in reference to the particular features of the code.

Deputy Merrell: Would it be better to go right through with it?

Mr. Williamson: We are here subject to your suggestion, Mr. Administrator.

Deputy Merrell: Now, of course, I do not know what particular things you object to.

Mr. Williamson: You assume we object to something?

Deputy Merrell: You said that I did not follow the suggestions ---

Mr. Williamson: We were disappointed that you did not follow some suggestions made in our report to you.

Deputy Merrell: I did follow some of them, however, I think.

Mr. Williamson: We have only found one.

Deputy Merrell: Maybe they are after page 11. I think the best thing to do would be to start in.

Is there anything the matter with the definitions?

Mr. Williamson: I might say, on Article I, Article II -- there is the word "establish"; as to whether it should be established or submitted. In the final draft it would be "established."

Until we get down to section 7 of Article II, -- section 8, paragraph A, our request was for ten hours per week to be changed to 20 hours. Why was that particular request not granted?

Deputy Merrell: Your 20 hours was based on the 45 hour week, was it not?

Mr. Williamson: No, not necessarily. It was on the spread of service, rather than the restriction of hours of work, for labor.

Is there any objection on the part of your advisers to letting us have that 20 hours in there?

Mr. Berrall: I object to that.

Mr. Williamson: Is there any serious reason for it?

Mr. Berrall: Yes. Twenty hours is higher than the working hours allowed to any other employees. The outside salesman, usually, if he is an outside salesman, we expect him to be outside.

If he is inside, his hours can be limited.

Mr. Williamson: May I make this explanation? In the wholesale drug business there are many men that do outside salesmen's work. We will say that they work outside for half an hour a day and come into the establishment and stay until noon or one o'clock, turn in their orders, and then, from that time on, they are engaged in helping to see that their orders are properly filled and sent out. And, if you only give us ten hours on that, it would surely restrict that sort of operation.

Mr. Newcomb: In the smaller houses there have been many employees who may divide their time; ten hours would work a

hardship and a handicap on the smaller houses.

Mr. Berrall: You mean these will have to get out the orders?

Mr. Williamson: Or supervise their orders.

Mr. Mayer: As a rule they go out and solicit orders four or five hours and then come in in the afternoon, in the smaller houses.

We are speaking about approximately two hundred houses, small houses, in the United States, on which this would work a hardship.

Mr. Berrall: In that set of circumstances, I do not see why that should -- why that they should work unrestricted hours.

The outside salesman is outside practically all of the time, and he only came in to get instruction in the morning, and and find out if there was anything new, and he would go out and not make a report until tomorrow. The maximum he would need would be one hour a day.

If you use many inside the house, and he spends as much time in as out, it is easy to restrict the hours.

Mr. Mayer: Most of the small houses are in the south, in towns of forty or fifty thousand population, and you have a man out four or five hours in the morning. He writes orders until twelve; in the afternoon he comes in and prices or checks, and it is particularly to take care of the smaller

houses.

Mr. Berrall: That man's hours can be restricted. If he is going to work four or five hours outside and is of course also available on the inside, it seems to me he could have his hours restricted.

I do not see a case for unlimited hours.

Mr. Williamson: That is a very indifferent matter in our trade. I do not think we feel we ought to have that -- it indicates so little difference from the labor viewpoint, that it ought to be conceded to us.

Mr. Berrall: It seems that there is a possibility of evasion, if he can act as a shipping clerk and fill orders; you can use a part of them part of the time on that, and the rest of the time selling, and thus it would be possible to make a party work unlimited hours.

Mr. Williamson: It is not done the way you visualize it. That is the actual fact.

Mr. Berrall: It could be done that way.

Mr. Williamson: Of course, anything could be done.

Mr. Berrall: If you work 30 hours inside and unlimited outside, the reason I am afraid of it is that the total hours which a man could work, that it will be possible to work him 30 hours inside and any hours outside.

Mr. Miller: All those that do that are not under our restriction. They would be away over the salary.

Mr. Berrall: The salesmen?

Mr. Miller: Yes.

Mr. Berrall: If you are willing to put those fellows in front of the thirty-five dollar limitation, I will not make a kick.

Mr. Williamson: That is what we are.

Mr. Berrall: Put them on the same class as professional people in the hours section of the code, I will not make any kick.

Mr. Mayer: On ten hours it gives a little over an hour a day extra. Forty hours would permit him to work three hours and twenty minutes a day,

Deputy Merrell: What about fifteen?

Mr. Berrall: The reason I said ten, I did not pick it out arbitrarily. It seems to me that an hour in the morning and one at night would be as much as is required.

Mr. Mayer: Six days would give you eighteen a week, one and a half hours in the morning and one and a half hours in the evening.

Mr. Berrall: Someone said most of these fellows are making more than thirty-five dollars a week.

Mr. Mayer: In some instances they are, and in smaller places in the south, in the good old Jeffersonian Democracy, they are making less.

Mr. Berrall: From what I have heard, it seems the

outside salesmen's hours could be limited. The theory of giving unrestricted hours for them is that they do not come in at night, and sometimes they have to stay out in order to make the sale.

These fellows come in and they are given jobs around the house, and it seems to me there is no reason for leaving their hours unlimited.

Mr. Miller: Have you ever been in the drug business,

Mr. Berrall: No, sir.

Mr. Miller: Well, sir, you have got to get around and write up a whole page of orders, so I should say an hour of this time these fellows are in, they are writing orders. They go out and make notes and have to come back to the office and write it up, which takes time. With the average man's time, when he comes in it would take an hour, an hour to enter his orders.

They do not do much in the house in the way of getting out the orders; it is just routing the orders through.

Mr. Mayer: Possibly you would make it three hours a day, three eighths of the working time.

Mr. Berrall: If they are engaged exclusively in writing up orders.

I am afraid this is an evasion of the code. Twenty hours is half the hours.

Mr. Williamson: You are dealing with the industries,

but I should say to you at no time have the wholesale drug industry people come in when they had back of it an effort to evade anything.

Deputy Merrell: He is just thinking of individual companies which evade some such clause.

Mr. Williamson: This is a practice that has already been here.

Mr. Newcomb: Would Mr. Berrall approve it if we had it at the end of that paragraph, so that it would read, "or any branch thereof by which he is employed in work not directly related to his duties as a salesman?"

These salesmen do come in the house and spend an hour or so in connection with their activities and work as a salesman, and not in connection with the activities of the house separate from his job as a salesman. He does some office work as a salesman inside the house.

Mr. Berrall: As a salesman?

Mr. Newcomb: Yes.

Mr. Mayer: Some of them sell inside the house.

Mr. Berrall: You want to ask no other function other than selling; that will prevent it?

Deputy Merrell: Take out the hour limitation altogether.

Mr. Mayer: Leave twenty hours inside the establishment.

Mr. Berrall: Providing no part of such time is devoted to any other function or task, to work other than selling.

That is the main thing.

Mr. Williamson: Can we pass that?

Mr. Berrall: Wait a minute. Under that thing, what would happen if a man was home sick and took a salesman off to do that work?

Mr. Mayer: At that time he ceases to be a salesman.

Mr. Berrall: I can see that in a case of that kind the Administrator will get all kinds of letters, saying what about this case, and what about another case.

Deputy Merrell: I think it is better to get it in in that way.

Mr. Berrall: I do not see any other way around it, unless you restrict the hours. It seems to me it would not do any harm to restrict hours of the salesmen.

Mr. Newcomb: That only applies to a few salesmen in the smaller houses.

The larger houses do not have that problem near as much. I think the way you have got it will fix it up.

Mr. Berrall: We have representation from all parties.

Deputy Merrell: Let us go to the public hearing in that way, and if there are any bugs, we will find them there. You will change that ten to twenty?

Mr. Newcomb: Yes.

Mr. Williamson: "B", we passed. Pass "C" and "D" --- "E", in reference to watchmen: There was some request in

reference to that.

Mr. Newcomb: We suggest be added, "and who may also have other duties.

Deputy Merrell: I took that out when you say primarily in safeguarding. That is to be inferred as other duties. You can put it in.

Mr. Berrall: Are other duties there contemplated?

Mr. Williamson: Primarily in safeguarding the premises; Supposing, while he was doing that safeguarding, or sweeping up the floor, -- he is primarily a watchman, but not to have his time hang heavily on his hands, we allow him to sweep up the floor.

Mr. Newcomb: I guess "primarily" does take care of it.

Mr. Berrall: Is the purpose of the record in interpreting this thing when it comes along, we have interpreted against the use of these watchmen as porters and cleaners, just a little of it might be O. K., but we don't expect this man to take the job of a porter and cleaner, and put the maintenance men on a forty-eight hour week and have the watchman be a maintenance man.

Deputy Merrell: They are preferring to have the watchman have some duties at night.

Mr. Berrall: If he will not be required to do those jobs ordinarily done by the regular porter or cleaner. If someone comes to the plant and he wants to go up to the second floor,

he probably would run the elevator. You would not expect him to have a regular chore, such as is done by someone else regularly on a fortyhour week.

Mr. Mayer: We may have an emergency for a biological, and he would get it out. We are thinking of the local code authority more than we are of the national code authority.

Mr. Berrall: I would leave it the way it is at present. "Primarily" covers it.

Mr. Williamson: Junior employees; we requested you to change that three months period to twelve months, and we note you have not granted that request in the suggested copy here. We are now making the same request.

Mr. Berrall: We are asking that the wholesale code be modified to provide three months for both juniors and apprentice employees. We fought that at the time of the hearing on this, and I believe that there is some reason to belief that we may get our way on it when the general code is modified.

I understand that hearing is to be shortly, and I do not see any reason why it should be changed to twelve, when we feel twelve months is too long, when it is not going to act as a real means of evading the minimum, making the junior wage the senior wage.

A man will not be a skilled man at the end of therethree months. Three months is not long enough to train a man, but

it is long enough to find out if he is worth keeping. We do not want the twelve months.

I see one interpretation and suggestion in here: At the end of the twelve months you can raise him or discharge him. In the twelve months learning period, there would be that incentive to fire that man and take on a new one.

Mr. Williamson: Have you had three months in all the other codes?

Mr. Berrall: No.

Mr. Williamson: What is the maximum you have in any of the codes?

Mr. Berrall: One year, I believe is the maximum.

Mr. Williamson: What code is that?

Mr. Berrall: In the general wholesale code.

Mr. Williamson: What?

Mr. Berrall: In the general wholesale code.

Mr. Williamson: Now, Mr. Berrall, if it takes one year for an apprentice to become a skilled employee, in the general wholesale code, how much longer will it take him to become a skilled employee in the wholesale drug code?

Mr. Berrall: You missed my point. I did not say he became a skilled employee. After all, we do not expect the men should be paid the minimum when they are skilled. If it is going to be paid to him, we know this code will reduce wages, because the average was around \$18 and \$20, and we

assume that is the wage paid to a skilled employee. We do not want the minimum to be paid to a skilled employee. That is for a beginner.

I have said before that it was a mistake. We never allowed any differentials for learners or beginners, but, having done it, we have to do it again.

Now, having done it, we want to limit that learning period to as short a period as possible. I think that three months is fair. I am afraid of a longer learning period.

Mr. Mayer: You have no objection to paragraph 3 of the wholesale code -- junior employees between the age of sixteen and eighteen may be paid as the rate of \$3 less per week than the minimum rate?

Mr. Berrall: I did object to that.

Mr. Mayer: In as much as N. R. A. passed that one division, they would not want to put anything into effect in the wholesale drug code that would work an undue hardship on them.

Mr. Berrall: This general wholesale code is expected to come up for rehearing and modification.

Mr. Mayer: Whenever they modify that, we can modify this.

Mr. Berrall: You should not be merely sticking to that general wholesale code.

Mr. Mayer: They have approved it, and it is the only thing we have as a guide. We are trying to follow the general

procedure of the general wholesale code as closely as possible. The only thing we have is the precedent of the W. R. A.

Mr. Berrall: We can not stand entirely on that, because a supplement is a supplement for a different division. I do not think you have proved the case for a lower wage for juniors.

Mr. Newcomb: How soon is it likely that the general wholesale code will come up?

Mr. Berrall: I turned it over to Doctor Dameron yesterday.

Mr. Mayer: Would you recommend three months?

Mr. Berrall: Yes.

Mr. Mayer: Will it be up and settled by the time we will get our hearing?

Mr. Berrall: We have had three months in other wholesale codes. We have not had any differential at all in several subdivisions.

Yesterday I had a conference with a supplemental group who were willing to drop out all differentials.

Mr. Mayer: Let us put in here, twelve months, subject to the revision of the general wholesale code.

Mr. Berrall: Why do you demand this extra period?

Mr. Mayer: Some of them have that privilege. It is a minor end of the business.

Mr. Berrall: Are you paying \$1 less to these junior fellows? Are you paying your junior learners any less than other

learners?

Mr. Mayer: You will find the schedule here.

Mr. Berrall: Or has it been the custom to raise them \$3 at the end of the year?

Mr. Mayer: Sometimes more and sometimes less.

Mr. Berrall: What is the beginning wage at present, if you know?

Mr. Mayer: Under the P. R. A.?

Mr. Berrall: Prior to that.

Mr. Mayer: About \$9 or \$10 or \$11.

Mr. Williamson: \$10 to \$15, according to the likelihood of the employee.

Mr. Mayer: I employed two persons the other day for \$18 per week.

Mr. Berrall: I am expecting a great turn-over after a year on this provision. There is a two dollar differential there.

Mr. Williamson: I do not think there would be any doubt of a differential being wiped out at the end of the year.

Mr. Mayer: It is agreeable with me to agree with you, Mr. Berrall: make it three months, subject to revision of the general wholesale code.

Mr. Berrall: That is not quite agreeing with me.

Mr. Williamson: I do not think that should go in.

Deputy Merrell: I should suggest possibly, owing to the

fact that this wholesale thing is not settled, we can go to hearing with twelve and thrash it out.

Mr. Berrall: How will that affect the actual provision where that occurs?

Deputy Merrell: When we put these on a three months basis under the general wholesale code, there is a \$2 differential for juniors and \$1 differential for apprentices.

Mr. Berrall: If you do that, you will have to change the apprentice back to \$1. Under the provision as it stands at present you will get a higher differential for your apprentices, but for a shorter period. As it stands at present, you get \$2 for three months for both juniors and apprentices. Under the general code in that particular provision you get \$2 for one year for juniors, and \$1 for three months for apprentices, people over eighteen. As it stands now, you get both of them for \$2, the older person as well as the young, but for a shorter period.

There might be a preference there. If you prefer to take the general wholesale code, we will have to wait until the hearing, but if you take this proposition you get a slight advantage on the apprentices, at least in the amount of the differential.

Mr. Doerr: It seems to me it would be better to follow the wholesale code's phraseology, instead of trying to set up too much of a differential.

Mr. Williamson: The general wholesale code has it two dollars?

Mr. Berrall: Twelve months, at two dollars less for the juniors; and three months, at one dollar less for the apprentices.

Mr. Williamson: The apprentices are eighteen dollars and above?

Mr. Berrall: In other words, in the general wholesale code, there is this differential.

Mr. Williamson: Yes.

Mr. Berrall: In favor of the older person, really, because the junior is two dollars less and he has to work a year to get it.

In this, the apprentice works three months, at one dollar less.

Mr. Williamson: How does that appeal to you gentlemen? Twelve months for the junior, with two dollars differential; apprentices three months, with one dollar differential?

Mr. Berrall: That is the way it goes in the general code.

Mr. Williamson: Would you say that would not work an unusual hardship?

Mr. Faxon: I do not think so. We are trying to find boys.

Mr. Williamson: That takes care of paragraph G.

Deputy Merrell: That stays as is.

Mr. Williamson: The next is article III, on the hours of labor.

Section 1 is O. K.

Section 2, we ask there, instead of forty-eight hours, that you give us fifty-four hours in any one week. We note you did not concede that to us, that you put it back to a forty-eight hour week, -- no maintenance employee shall be permitted to work in excess of forty-eight hours.

Deputy Merrell: It was forty-four, and you asked fifty-four, and I made it forty-eight.

Mr. Williamson: I am wrong about that. You gave us four hours.

Deputy Merrell: Yes.

Mr. Newcomb: The Administration divided sections 1 and 2. Two and three were for maintenance employees and outside service as one paragraph. Watchmen represents a separate paragraph.

You made two paragraphs instead of one, giving us forty-eight hours for maintenance employees, and forty-four hours for outside service employees. What we are requesting is fifty-four for the maintenance employees.

Mr. Berrall: I can not see that at all.

Mr. Newcomb: I think it is a question of interpretation, understanding what these employees do. We had some discussion

on that subject this morning.

Mr. Berrall: You have got a long discourse of what they do in the definition up here. That is already in here.

Mr. Williamson: I would like you gentlemen on the committee to discuss that with Mr. Berrall.

After the words, "forty-eight hours in any one week", then we ask to take out these words, "no more than six days in any consecutive seven-day period". Cut those words out.

Mr. Mayer: That conforms then with the general wholesale code.

Deputy Merrell: The general wholesale code is forty-eight hours a week. Outside delivery men, maintenance men, outside repair service, and installation men, to work forty-eight hours a week.

Mr. Berrall: The question is, there were no particular hours of the maintenance employees, but there was data as to the outside people, the truck drivers. Those are the only outside service people you have, I presume, and the average was only two hours longer than the warehouse workers, which to my mind was an excellent reason for not making them longer in the code than they are at present. Forty-eight hours does make it two hours longer than you have at present.

We have it forty-four in several codes, and we do take that into consideration.

Mr. Williamson: Forty-eight hours, and delete the words,

"more than six days in any consecutive seven", and change the section to read forty-eight hours, and it conforms to the wholesale code.

Mr. Berrall: Change it to read forty-four hours, and throw the two into one paragraph.

Mr. Williamson: It is forty-eight hours in the general wholesale code.

Mr. Berrall: You have not proven the case for it. Your figures would indicate forty-two rather than forty-four.

Mr. Krupp: That is subject to weather conditions and truck troubles, and I rather think forty-four hours is not sufficient.

Mr. Berrall: I appreciate the case on the daily hours, but I do not see any occasion for it as to the weekly hours. I do not see why there should be longer weekly hours. If you work longer, you should start on schedule and have another truck driver. I do not see why they should be longer than anyone else. They have never been longer than two hours. Why make a change now?

Mr. Krupp: Suppose we throw two and three together, put in paragraph 3 in the general wholesale code, outside delivery men, maintenance men, outside repair service men, insitallation men, forty-eight hours.

Mr. Berrall: Forty-four hours.

Mr. Williamson: It is forty-eight here.

Mr. Berrall: You have not proved the case.

Mr. Williamson: We have tried to prove our cases, but you have thrown our cases out.

Suppose we go to this hearing on what we have got here, and delete paragraphs 2 and 3 and substitute "C" that is in the general wholesale code. The grocers got forty-eight hours in their code.

Mr. Berrall: That is another case promised a new hearing.

Deputy Merrell: You gentlemen seem to think that Mr. Berrall is proud of the general wholesale code.

Mr. Faxon: We are competing with it and the grocery code.

Mr. Berrall: Is it true truck drivers and clerks work eight hours per week longer than other employees?

Mr. Faxon: In the middle west, yes.

Mr. Doerr: Forty-eight hours on a forty-eight hour basis is a different thing than forty-eight on a forty-five hour basis. Operating forty-five hours, as we do today, the truck men, truck drivers, many of them, are working a little over forty-eight hours, but not much, but some.

Mr. Berrall: These figures were as of June, 1933.

Mr. Newcomb: Were they not in this booklet?

Mr. Berrall: No. I made the compilation. There is some table about truck drivers.

Mr. Doerr: Is not your delivery service for all truck lines forty-eight hours today?

Mr. Berrall: The trucking code is forty-eight. It is the practical maximum.

Mr. Doerr: Is it consistent or inconsistent to give it to the drugs code?

Mr. Berrall: Not when you consider the question of employment.

I will agree that the grocers have no more reason for it than you have. I will agree to that.

Mr. Doerr: You have got it in three codes. Why not give it to us?

Mr. Berrall: If it is understood that you are going to the hearing on the provisions of the general wholesale code, there is no use discussing these provisions any further. These things have to be battled out and examined on the basis you have shown us, and we have gone to bat and you have not demonstrated the necessity for eight hours longer for truck drivers.

They have worked forty-eight, fifty, and fifty-two, but the warehouse employees will benefit a great deal more from this code than the truck drivers.

Mr. Williamson: The normally get a higher wage.

Mr. Mayer: We have some wholesale houses that conduct their trucking line, and it would be unfair to put them on

forty-four hours when the truck industry is under forty-eight hours.

Mr. Berrall: Do you want, instead of this paragraph, that the outside service employees shall be governed by hours and wage provisions of the general trucking code?

Mr. Mayer: Outside delivery men work forty-four hours per week, as in the general wholesale code. It has been already approved.

If it goes up for revision and it is revised downward, maybe we will have to revise ours downward too. We are trying to follow this in order to simplify it. We have had to have a guide, and we are taking the codes which have been produced by the N. R. A., and using them as a guide.

Deputy Merrell: If we finish this today, we can set it for hearing right away.

Mr. Williamson: The industry is working on a forty hour week, and we are working a forty-eight hour week for delivery men, truck men, and we will only ask one hour and twenty minutes per day longer than the inside men are working, and it is conceded that men handling trucks for delivery, for outgoing and incoming freight, the outgoing is the most important, and they have to work longer, and as a rule they are pretty well paid men.

Mr. Berrall: In the past they have evidently only worked two hours a week longer.

Mr. Williamson: I do not believe that would be correct. I have not any figures.

Mr. Berrall: Those are the figures I had from your people.

Mr. Williamson: I am taking it from my experience. I have not managed a wholesale house for six years, but, based on that experience, they would also always work ---

Mr. Doerr: Your figures were based on forty-five hours per week.

The average time is forty-six and forty-seven and a half hours. We can still stay within that average time, and forty-eight hours will keep you within that.

Mr. Berrall: What I am going to say is this: We tried to get a hearing on the general wholesale code within the same week, and then we can have the general discussion of the two codes at the same time, -- or maybe three.

Deputy Merrell: Whether you have it at the same time or not, the chances are the approval of this code would be held up until the results of that hearing are made know.

Mr. Berrall: I appreciate the overlapping of this code, and the unfair competition involved. We know there are differences in different divisions of the wholesalers, and we found some divisions could pay higher minimums than these. I am not convinced we can get the higher minimum out of you fellows, but I do not see why we should allow these hours which are in the

general wholesale code, because they were taken as an average of what all wholesalers, of all sixty-seven varieties, might be able to do.

They stated at the time of the general wholesale code we would expect to have supplementary labor provisions in the various groups when they came up for fair trade practices. You have submitted an entirely separate code, and the same logic holds. We ask to see the figures you have in justification of the figures, and we feel that we do not find the truck drivers or outside people have in the past worked more than two hours a week more than other employees, and I do not see why we should discriminate in this case, because plenty of fellows are around looking for jobs that could drive a truck. The only outside service men whom you are employing are truck drivers.

Mr. Faxon: There is one other set-up; the soda fountains.

Mr. Newcomb: While these truck drivers may be operating in conformity with the P. R. A., they are covering certain routes, and, while the indisputed inside employees may work a few shorter hours, it will take these truck drivers as long to make their territory.

Mr. Mayer: It may take longer.

Mr. Newcomb: It will not be shorter. It takes them just as long to get around these routes, while the house

employees work forty or forty-five hours.

Mr. Berrall: You say you are not going to take on any new truck drivers?

Mr. Mayer: When a man starts, he has to work the day.

Mr. Berrall: If you shorten the hours it might require another man.

Mr. Doerr: Normally for delivery in a city you get maybe two delivery men. In some of the larger cities, of half a million or a million population, have three delivery men. And to cut off an hour of those three men does not warrant putting on another man for a three hour delivery.

Mr. Berrall: When the figure is taken into consideration --- that is, I mean, when you figure it on a day, perhaps not, but when you figure it on the week, that is a half week's work.

Mr. Doerr: I venture to say that you could take the wholesalers in the United States; they will not average two trucks as a whole, and if they have to be limited to half an hour a day, you are putting on more expense.

Deputy Merrell: Is it not true, in most large cities, wholesalers substitute outside trucking service?

Mr. Doerr: Fifty per cent of it is being hired today, and they are on the basis of forty-eight hours.

Mr. Krupp: We have our own truck service, and it is very difficult to regulate the hours of a delivery man,

because we have the outside conditions, the traffic conditions, and other conditions, and so many things that happen, over which we have no control. It is much easier to regulate inside hours than outside hours.

Mr. Berrall: I grant that.

Mr. Mayer: If we do have a forty-eight hour week, it would be more fair and easier of operation.

Deputy Merrell: I suggest, Mr. Berrall, that we let this forty-eight hours rest until we get some more definite data on the trucking code and the wholesale code.

Mr. Berrall: I would like to see them coming up about the same time.

Deputy Merrell: They will be. The trucking industry has that in it, and it is a question of revising that according to what has happened in the general wholesale code. It would be a natural thing, whenever a revision is made downward in general wholesaling that every wholesaling code in the N. R. A. would come up for the same scrutiny.

Mr. Mayer: In as much as some manufacturers in the wholesale drug industry employ outside trucking and others have their own trucks, it would be unfair competition to force those that own their own trucks to forty-four hours, while those employing trucking companies would get four hours longer, forty-eight hours. It would be unfair competition and that would have to be put on a fair basis. That is why I am suggesting

we delete 2 and 3 and substitute "C". Then it will come for a hearing on the general code and you will have something more definite by that time, if all these codes are coming up together at the same time.

Substitute "C" in the general wholesale code.

Mr. Williamson: Why not make it read somewhat similar to that?

Mr. Mayer: That is all right.

Mr. Berrall: Put your outside service in No. 2 and eliminate No. 3.

Mr. Mayer: Make it forty-eight hours.

Deputy Merrell: Eliminate section 3.

Mr. Doerr: You have got your maintenance to take into consideration, and that means firemen.

Mr. Berrall: Yes.

Mr. Doerr: The firemen of the building.

The fireman of a building takes care of his building seven; on seven days in the week. He fires in the morning on cold days, and comes back and fires at night, for a short while.

Mr. Berrall: That is too much.

Mr. Doerr: Maybe it is, but industry nationally is running on that basis. He does not do anything other than to do the same things you would do if you were running a furnace in your home. You have got to fire on Sunday just as well as on Monday, if you want to have it done at all. It makes no

difference if it is in your home or in your office. They can not do otherwise.

These firemen come down and pour in a few shovels of coal or fill up the iron fireman.

Mr. Berrall: I thought you were going to use your fireman for that.

Mr. Doerr: We do not have that time in the cold north; we do not have that done.

Deputy Merrell: You come from Minnesota.

Mr. Doerr: Yes. If he is a maintenance man, -- that is another thing we must take into consideration -- a lot of us are equipped with A. D. T. service, and do not want a watchman.

The man starts looking after the furnace, throws in a hod of coal, on Sunday, the same as on Monday, and you can not do otherwise.

There is just no relief for a thing of that sort.

Mr. Mayer: Many of them have automatic firemen, and they come on Sunday to throw on some coal and go away. The furnace man is the only exception.

Mr. Williamson: Few wholesale drug houses have maintenance employees. It is not like a manufacturing plant that keeps a machinist or a carpenter.

Mr. Doerr: If you leave paragraphs 2 and 3 the way they are, and change 3 to forty-eight hours, and leave your 2 forty-

eight hours, and eliminate from paragraph 2 "more than six in any consecutive seven days".

Mr. Kittelle: We can simply eliminate furnace men or firemen by this specific clause.

Mr. Williamson: Put in there, firemen excepted, as to the seven day week.

Mr. Berrall: If you put that parenthesis after the word "period", that would apply only to six days in seven, and would not include exception from the forty-eight hours.

Mr. Kittelle: You had better make it specific. We can write it up.

Mr. Mayer: In some houses they operate service department for soda fountains, carbonators, and things of that kind. If you limit a man, and a druggist calls up and says, "I have got an ammonia leak and I can not operate my fountain", well, you just have to send a service man out there. He asks for it.

If he has been working six days and you can not send him on the seventh, what will you do?

Mr. Kittelle: Give him two days off the next week.

If he is working on soda fountains, he would not come under your code.

Mr. Williamson: The particular outside service employees working in an industry that is covered by a code for that industry, then he will have to be covered by it.

Mr. Mayer: If there is an exemption, it is O. K. with me. I brought it up because I know what the situation is.

Mr. Williamson: I understand.

We have two men in our house in Kansas City doing that job.

Mr. Kittelle: Make it this way: No maintenance employee or outside service man shall be permitted to work in excess of forty-eight hours in any one week, nor more than six days in any consecutive seven day period, except as provided in section 6 of this article, provided, however, that furnace men shall not be subject to the restriction of six days in any consecutive seven day period.

That is rough, but it can be worked up quite easily enough, I think.

Mr. Mayer: What will you do about a soda fountain man?

Mr. Kittelle: They are not under the code.

Mr. Mayer: Are they in another code?

Mr. Kittelle: General wholesale, I think. I do not know -- the wholesaling of soda fountains.

Mr. Mayer: That is all right if you want a soda fountain man to come under that provision of the general wholesale code, paragraph "C"; that is all right.

Mr. Doerr: These employees spend most of their time in other activities.

Mr. Mayer: If they call you up and say, "Send Schultz

out here"; that they have a leak, and that you just have to send him.

Deputy Merrell: That would come under the emergency situation.

Mr. Kittelle: You can work any employee in excess of the limitations if you pay him time and one third.

Deputy Merrell: The gentleman who represents the Consumers' Board desires to make a statement.

Mr. McGarty: I regret that I have to leave this meeting.

I do desire to reserve the right to have the Consumers' Board represented when the final hearings come on.

From a cursory examination of this code, such as I have been able to run through, it appears to me you folks have been eminently fair. I do not see any serious matters from a brief examination, but I want to reserve the right so that we can appear at the hearing, and if there is anything we object to we will have that privilege.

Mr. Mayer: Can we deny that?

Mr. McGarty: No.

Mr. Williamson: Section 4, executive and professional persons actually working at their profession will receive a salary for guaranteed minimum compensation of \$35, and outside salesmen shall be exempted from the provisions of this article, and so forth.

Gentlemen, was there anything on that section?

Mr. Mayer: Yes, sir. Substitute the word -- we follow the general wholesale code after the word "executive"; substitute "supervisory and technical", and after the words "\$35 or more per week in cities over 500,000, \$30 per week in cities of less than 500,000."

It is in the general wholesale code.

Deputy Merrell: That was not objected to before, was it?

Mr. Berrall: What is the necessity of the supervisor and executive ---

Mr. Mayer: (Interposing) I would have to ask the man that approved the general wholesale code.

In cities over 500,000, and \$30 in cities less than 500,000.

We will eliminate the words "supervisory and technical", if you wish.

Deputy Merrell: Do you want that \$30?

Mr. Mayer: Yes.

Mr. Berrall: For what reason?

Mr. Mayer: It is in the general wholesale code, and we have druggists competing with wholesalers.

Mr. Berrall: I do not understand why you do not agree to this. There is no case in any record submitted to me for executive differential. One of the things we walloped in the general wholesale code, refusing to give our approval ---

Mr. Mayer: Did it pass without your approval?

Mr. Berrall: Yes.

Mr. Mayer: It did?

Mr. Berrall: Yes.

Mr. Mayer: How did they do that?

Mr. Berrall: I do not know.

Mr. Mayer: You mean there is some way to get these things signed and approved without your approval?

Mr. Berrall: The Administrator undoubtedly thought there were good and sufficient reasons for doing it. I am not sure there were sufficient data at the time of the approval of that general wholesale hearing to back our contention. The data submitted by you in the case, if anything, in the case of the wages were not sufficient, and in giving a further differential on the executives will merely make it more easy to evade the hours provisions in towns of 500,000 than would otherwise be the case if you leave it \$35. That is why we are against it. That executive differential, by the way, appears only in the retail and wholesale code. No manufacturing group has asked for a differential in that respect.

Mr. Mayer: I do not see how the wholesale drug industry could afford to be exempted there, in view of the fact that they have taken a reduction in the hours and recommendations approved by the general wholesale code, and we are competing with them the general wholesalers, and we are entitled to the same that

they are, and I would suggest that we go into the general hearing with that in it, and if you want to revise the general wholesale code, we would be revised accordingly.

Mr. Berrall: You are entitled to your contention. I am just wondering, or just wandering, through the position which has just been submitted.

I do not believe in passing anything, merely on precedent. We feel the press of the whole situation, and the exception means the possibility of calling somebody an executive and getting around the hours limitations.

A good many of your employees get more than thirty-five dollars a week. If you lower the limitation there of thirty-five dollars there for executives, you make it possible to except just a few more people.

Mr. Mayer: The same thing with general wholesalers. There is no difference.

Mr. Berrall: That is not a reason for passing further codes with such a differential in it.

Mr. Williamson: What is your opinion and reaction as to that idea that has been so prevalent, that in cities of 500,000 and above, they should have the minimum salary or wage higher than in cities below 500,000. There is some reason for that.

Mr. Berrall: There is some evidence of a correlation between wages and the size of cities. It is something that must be taken into consideration. There is very little

difference between a city of 600,000 and 100,000. I do not think you would find it. You would find some difference in a city of 10,000 and a city of 500,000. You find the biggest jumps when you get below 10,000. Between 10,000 and 500,000 -- I made a very careful study on retail wages and there was little change. You have to work on averages; that is, wages of employees.

Executives are usually compensated on a different basis, not on cost of living but on ability to produce, and I do not see any reason for paying an executive in one town less than another. They are paid on what they can produce. That is the whole situation. And a man that can produce the same volume of business in towns the size of Hartford, getting just as much as he does in New York, if he does the same business, I do not see any reason why he should be paid otherwise than the man in New York.

Mr. Mayer: You have got an entirely different problem in regard to the volume of sales in the city of Hartford, Connecticut, and the city of New York, and you will find, through all industry, executives or professional persons getting \$35 a week or more in New York, or cities over 500,000, the comparable wage for that type of work. Under \$30 in towns of one, two, and three hundred thousand people.

Mr. Berrall: For executives.

Mr. Mayer: Yes. I think it only fair for the houses

located in the smaller cities, that they have the same differential they do in the general wholesale code. I think the situation where there are so many wholesalers in competition with the general wholesalers and with grocers is to some extent affected.

Mr. Berrall: Your contention is that we should try this thing just as it is in the wholesale code.

Mr. Mayer: That is the only guide we have got.

Mr. Berrall: I am point out what things we objected to, and we will continue to object on that basis.

Mr. Mayer: Suppose we go to hearing.

Mr. Berrall: If you go to a hearing -- you can go to the hearing on the basis of the general wholesale code, but we will still have the same battle.

Mr. Mayer: Let us go to the hearing and fight it out there.

Mr. Williamson: We follow the general wholesale code where our industry permitted us. If there is a theory somewhere in the Administration that that differential is justifiable, then in that case I think it ought to apply to the wholesale drug industry.

Mr. Berrall: It was passed in that original code. No satisfactory reason was ever given; no reason was given for the differential except the cost of living. I did not know of any economic justification for that, so far as executives are

concerned.

Mr. Mayer: I assume there was an economic reason.

Mr. Berrall: There is some feeling that the minimum wage is supposed to be based on the cost of living, but I do not see that that applies to executives. But, if it is understood that the rest of this will be as it is in the general wholesale code, or just changed in a slight degree, there is not much more that I can do. I think you have changed some of the paragraphs further down so as to at least allow overtime after eight hours, and that change is denied in the general wholesale code. You are limited to a forty-eight hour week. Was that agreeable to you?

Mr. Mayer: We are coming to that now -- section 5.

Mr. Williamson: Now we pass section 4 and go to section 5.

Mr. Mayer: Section 4 goes in as it is written in the general wholesale code.

Mr. Williamson: Or with the phraseology, we get \$30 as a minimum for executives in cities less than 500,000.

Deputy Merrell: Why did you not object to it before?

Mr. Newcomb: We had too much to consider.

Mr. Mayer: It was discussed in New York. I brought it up myself.

Mr. Berrall: You fellows leave me that much more to talk about.

Mr. Newcomb: Many of these paragraphs are related to each other, and the explanations we made in New York were based on our consideration of the code as a whole. We have made some modifications, and therefore this paragraph, section 4, that we have been considering, will come in.

Mr. Berrall: I have made a date for three-thirty. I want to stay here, but it seems that I must go.

Mr. Doerr: Thirty and thirty-five dollars, you wrote in in November.

Mr. Berrall: Show that to me at the time of the hearing, please.

Mr. Williamson: Section 5.

Mr. Berrall: I think this will take a little longer than I thought it might.

Mr. Merrell, you protect the standards of the general wholesale code, and there is no use of my remaining after all, if we are going to leave it as was.

Mr. Newcomb: Not quite as was.

Mr. Berrall: As in the general wholesale code.

Mr. Newcomb: That is better.

Mr. Mayer: We have come a good many miles, and we would like to have you stay.

Mr. Berrall: If you insist on sticking on it, I do not see what can be done.

Mr. Mayer: Can you not stay with us for a few more

minutes?

Mr. Berrall: You are not giving me any reason except on the other code. If that is the basis, why should I stay any longer?

Mr. Mayer: Wait until we come to section 5.

Deputy Merrell: I would suggest, Mr. Williamson, you go on through the labor provisions, and we will not have any discussion.

Mr. Williamson: Section 5 has reference to the maximum hours of work, and in our memorandum submitted to Mr. Merrell we asked for forty-five hours, and, running true to form, we did not get forty-five hours.

In this proposed code, of forty hours in any one week -- there is not anything we can say about this forty-five hours other than we have already said, and it will be a waste of time for us to go all over the argument which we have stated heretofore. We feel sincerely that we have presented that fact before and that we should have what we have asked for.

You feel, I presume, that forty hours is all you are going to give us. We still feel that it would work a hardship. We are here today asking if you can not make a compromise with us in the light of what has gone before, and the difference between forty and forty-eight, or forty and forty-five hours, and allow us to have a minimum of a forty-two hour week, which would be a half an hour a day off of the working hours.

Then we felt we might be able to adjust ourselves to meet that.

We are asking you to grant us a forty-two hour week. We know that foods and groceries have forty-four. Then, we know that they are serving some of our people, and we do not believe that the service of food is any more important to the industry, or to our country, than drugs, and, for other reasons that we have stated, we are praying for forty-two hours.

Deputy Merrell: The answer is no.

Mr. Williamson: The answer is no. I suggest you go to the hearing with forty hours and ask for forty-two.

Mr. Mayer: How did the general warehouse code get forty-five?

Mr. Newcomb: Well, in that case ---

Deputy Merrell: I do not know.

Mr. Mayer: There is no emergency with warehousing. Food has forty-four hours.

We want to be reasonable and do as nearly as it is humanly possible -- we want to cooperate with your department. We submitted all the evidence.

If you will let us try forty-two hours for six months, that means that something may come of it, after we have had an opportunity to know merely what can be done.

Deputy Merrell: Divisional Administrator King said forty hours. I am afraid that is that.

Mr. Doerr: In setting up these hours, has any schedule been made out as to what is a day's work?

We have been working on five days, eight hours a day, and one day, five hours a day. We are supposed now to work seven and a half for five, and four and a half on the sixth day of the week.

There is some consistency of knocking off thirty minutes a day, three hours a week, without completely upsetting an organization. But, the minute you carry this thing beyond that, and even cut off one half an hour a day, you are getting to the point of staggering help, which makes for inefficiency, rather than efficiency.

If anybody has got a sensible schedule for a forty hour week divided up into six days, I would like to see him. I have never seen one yet, but it makes a regular time schedule in the house, seven and a half for five days and four and a half for the sixth day, and we are willing to do anything which is humanly possible.

Deputy Merrell: Why not five hours a day on Saturday and seven hours a day?

Mr. Doerr: Seven hours a day and five hours on Saturday?

Deputy Merrell: Yes.

Mr. Doerr: That would be fine if the business flowed that way. But you are open to do business in the way your business flows.

Deputy Merrell: You could all in the same community go on eight and five, if you wanted -- you could go on seven and five, which we are proposing.

Mr. Mayer: Five days a week?

Deputy Merrell: Yes.

Mr. Mayer: Without any more employees.

How will you add any more employees?

I have not seen anybody add any employees in the whole-sale line; we have employed more in Indianapolis than any other concern in Indianapolis. We have checked them all; every one of them. That is more employees than anyone else.

When we went to forty-five hours a week, then the groceries had all they wanted, forty-four; hardware, dry goods, they went to forty.

Mr. Berrall: Maybe you had more business than they had.

Mr. Mayer: No, we have not. Our business is entirely a different type of business.

Mr. Berrall: The excess of personnel may be greater in your case than in the others.

Mr. Williamson: All the recommendation we would present would be a duplication. I think we all in the industry realize that we have gone the limit in trying to sustain our contention.

Therefore, based on my experience of the last ten days on this particular question of the forty-five hours as against

forty, we here today are suggesting again forty-two, our compromise, the seven and a half hour day for five days and the half day.

I do not think it is necessary for us to go into that subject. I think the best thing for you to say, or for us to say, is that we recommend the number of hours that we have recommended, forty-five, or you recommend forty-two hours.

Deputy Merrell: I do not believe that that can be done.

Mr. Williamson: And close the argument.

Deputy Merrell: I think it is closed.

Mr. Williamson: I am opposed to going on arguing about forty or forty-five hours.

Deputy Merrell: The definite word I received from Mr. King, was that you take forty hours.

Mr. Williamson: I have a very clear recollection of that.

Deputy Merrell: There is no use going over that.

Mr. Williamson: That means you could not conscientiously recommend that they work more than that?

Deputy Merrell: I can not. I am sorry.

Mr. Williamson: Then we accede to the forty hour demand.

Deputy Merrell: Forty. There is no question about that. We have to have forty. I have orders.

Mr. Williamson: That is the reason why I think we are losing a lot of time, taking up these gentlemen's time, these gentlemen's time and hours.

Deputy Merrell: What is the next thing?

Mr. Williamson: The understanding is we will be required to work forty hours.

Mr. Newcomb: I think the chairman of this sponsoring committee would like to reiterate the statement he made to Administrator King, placing the responsibility of this on the Administration, and not on the industry.

Mr. Williamson: I think that is clear.

Mr. Faxon: It is not in the record.

Mr. Williamson: For the purpose of the record, I might say, gentlemen, that during all these hearings and conferences we have conscientiously believed that forty-five hours was the minimum hours that could comfortably and properly serve the drug business.

We are compelled under the ruling and standing of the code authority that forty hours is what must be in our code. We want it rightly understood that we bow to that request of the Administration, when they insist upon it, and will give us nothing else, and the responsibility for that shorter week must be with the N. R. A. administrators.

Mr. Mayer: We accepted it because they demanded it.

Mr. Newcomb: We accepted it under protest only.

Mr. Williamson: Now, gentlemen, in that clause, if it is finished, let us proceed.

Deputy Merrell: I would add that the Administration

has studied all of the briefs and the statements that you have made in connection with the forty-five hours, and we feel that the wholesale drug industry should accept the terms that have been given to the general wholesale industry in their code.

Now, what is next?

Mr. Williamson: Section 6. We have only one suggestion there. That is down in the sixth line, the words, "similar emergencies"; that the word "similar" be taken out, so that it shall read, "or emergencies", and so forth, which I will explain.

Deputy Merrell: What would cause an unreasonable demand?

Mr. Faxon: We decided in connection with the soda fountain, and you say that is an emergency.

Mr. Williamson: What we would say was an emergency, and not similar, if there happened to be a rush demand for some antitoxin or vaccine, and so forth.

Mr. Kittelle: I would like to ask Mr. Berrall one thing: In all codes we say this: During an epidemic, catastrophe, or any emergency involving breakdowns or protection of life or property.

Mr. Berrall: That is O. K.

Mr. Kittelle: Do you think that is all right?

Mr. Berrall: That is O. K.

Mr. Mayer: The question on wages, I understand, you

passed the proprietary code yesterday for thirty-five cents, forty hours.

I understand there are other codes in from the drug industry, of thirty-five cents minimum wage, forty hours.

Mr. Berrall: Do you manufacture any drugs?

Mr. Mayer: No.

Mr. Berrall: I do not think that would be a good argument.

Mr. Mayer: The gross profit of the drug manufacturing industry, the net profit of the manufacturing division of the drug industry, is greater than our gross profit, so where you insist on putting us at thirty-seven and a half cents an hour, for forty hours ---

Mr. Berrall: (Interposing) Our recommendation is forty cents, in the pharmaceutical code, all those codes of that nature.

Mr. Mayer: Forty cents?

Mr. Berrall: Yes.

Mr. Mayer: How do you reconcile forty cents with our net profit?

Their net profit is more than our gross profit and you ask us to take thirty-seven and a half and thirty-five cents?

Deputy Merrell: It is an entirely different type of labor.

Mr. Mayer: What is the difference in the labor?

Deputy Merrell: The minimums in the manufacturing codes are for a different type of labor than you have.

Mr. Mayer: In what way?

Deputy Merrell: Those minimums only apply to girls warping packages, and so forth.

Mr. Mayer: Are not skilled workers entitled to more than that?

Deputy Merrell: The type of people you are hiring, you pay more money to.

Mr. Mayer: That is not a correct statement ---

(Informal discussion followed, which the Reporter was directed not to incorporate in the record.)

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Mr. Williamson: We are still under article III and we are down to section 7. We have no comments.

Section 8, we have no comments. My memorandum does not indicate any comments.

Article VI, wages, section 1. That we have been discussing, apparently, for the last fifteen or twenty minutes, the question of the thirty-seven and one half cents. Is there any further discussion on that question?

Mr. Mayer: I move that that fifteen dollars a week be changed to thirty cents an hour, and that the fourteen dollars a week be changed to twenty-five cents an hour.

Assistant Deputy Merrell: I should like to point out ---

Mr. Williamson: Twenty-five cents.

Mr. Mayer: Yes.

Assistant Deputy Merrell: I should like to point out that those provisions will not be acceptable to the Administration as they are different than you find in the general wholesale code.

Mr. Williamson: How can you get down to twenty-five cents on fourteen dollars?

Mr. Mayer: I am basing it on forty hours a week and I am basing it on a ratio to what they have given, thirty-five cents minimum, in the manufacturing codes.

Assistant Deputy Merrell: I would like to point out that the suggested provision Mr. Mayer spoke of would not be

acceptable to the Administration, as it is different than the provisions in the general wholesale code.

Mr. Mayer: Just strike off the record what I said.

(Discussion off the record.)

Assistant Deputy Merrell: Go ahead, Mr. Williamson.

Mr. Williamson: Section 2. There were no comments.

Section 3. The minimum rates for junior employees and apprentices shall be two dollars (\$2) less than the corresponding rates set forth hereinabove. The combined total of such junior employees and apprentices who are actually receiving less than the applicable minimum rates specified in sections 1 and 2 of this article shall not exceed one (1) for every ten (10) employees or fraction thereof (excluding outside salesmen) in any one establishment.

Assistant Deputy Merrell: I would like to point out, Mr. Williamson, that when we came to the junior and changed it to twelve months, that will change this section to be two dollars and one dollar for apprentices.

Mr. Williamson: I understood that. The other is the ratio of the juniors or apprentices to the total number of employees.

Previously, we discussed that to some extent. We felt that it should be a one to five ratio up to twenty, and one for every ten over twenty.

Assistant Deputy Merrell: I would suggest you follow

the general wholesale code, which has what you request in it.

Mr. Williamson: Yes, that is article IV, section 1 (d), of the general wholesale code, giving us one for every five up to twenty.

Assistant Deputy Merrell: Section (e), Mr. Williamson.

Mr. Williamson: All right. I had (d) down here.

Assistant Deputy Merrell: That comes under section 4.

Mr. Williamson: That will be agreeable to you?

Assistant Deputy Merrell: I think it will.

Mr. Williamson: Then we can pass them, can we not?

Assistant Deputy Merrell: Follow what the general wholesale has. We will go to a public hearing on it. You have two dollars for juniors, and one dollar for apprentices. In rephrasing this code, I suggest you follow as much as possible the language which we have in ours, as I think it is in better legal phraseology.

Mr. Williamson: I think if you will do it, if you have the time, sir.

Mr. Kittelle: I can do it in a very few minutes.

Assistant Deputy Merrell: Where you are simply changing the wording, I do not think it is necessary to submit it to the whole committee. Mr. Williamson can pass on it.

Mr. Mayer: Mr. Williamson can pass on it as far as I am concerned.

Assistant Deputy Merrell: Is that O. K. with the

committee?

Mr. Mayer: Yes. Section 4 is the general wholesale section (d).

Mr. Williamson: We are discussing section 4. Our suggestion was, after this morning's conference, that we write in there the general wholesale code, article IV, section 1 (d). Does that meet with the approval of you, Mr. Merrell, and your associates?

A part time employee or one paid on an hourly basis shall be paid at an hourly rate not less than that obtained by dividing the appropriate weekly minimum wage specified for him in previous paragraphs of this section by the appropriate maximum number of hours specified for him in article III.

Assistant Deputy Merrell: For the purpose of the public hearing I would suggest that we change that section 4 so it will read:

"No part time employee or employee paid on an hourly or piece rate basis shall be paid less than the hourly rates specified in sections 1, 2, and 3."

Mr. Williamson: Of this code?

Mr. Kittelle: There are hourly rates stated in section 1.

Assistant Deputy Merrell: Do you object to the following phraseology in the second sentence and the third sentence?

Mr. Mayer: What section?

Assistant Deputy Merrell: The same section.

"Any employee who works less than the regular full time weekly hours of labor established by his employer shall be considered a part time employee."

That is all right.

Mr. Mayer: Yes.

Assistant Deputy Merrell: There is no reason for that, is there?

Mr. Kittelle: The last sentence in section 4 reads:

"Any employer may establish shorter full time weekly hours of labor than the maximum hours specified in article III of this code for all of, or for any group of, his employees, but the minimum weekly wage specified in sections 1, 2 and 3 of this article shall not be reduced notwithstanding such reduction of hours."

That means you could say, "Well, I will put all my employees on a thirty-five hour week in my plant", or "I will put one group of them on", but that group, or all of them, would still have to be paid the minimum wage of the fifteen dollars a week.

Mr. Williamson: For a full week?

Mr. Kittelle: Yes.

Mr. Mayer: Just follow article IV, section (d), of the general wholesale code.

Mr. Williamson: Section 5. We have no comment on section 5.

On section 6, no comment.

On section 7: No hourly, daily or full time weekly compensation for employees who are paid less than fifty dollars (\$50.00) per week shall be less than such compensation existing as of June 16, 1933, and no such employee shall be paid a wage rate which will yield a less wage for the shorter full time week herein established than he could have earned for the same class of work for the longer full time week existing as of June 16, 1933. Wage increases established under the President's Reemployment Agreement shall at least be maintained.

We raise the point that that should be thirty-five dollars instead of fifty dollars.

Assistant Deputy Merrell: I would like to point out that this fifty dollars is a better proposition than you have in the general wholesale code. In that code this clause would apply to everybody.

Mr. Kittelle: Even if they were getting two hundred dollars a week, it would still apply to them. This applies to all employees. It has no connection with the thirty-five dollars executive clause.

Mr. Williamson: What is the objection?

Assistant Deputy Merrell: So you do not have to adjust wages above fifty dollars.

Mr. Kittelle: The labor board used to require you to adjust wages all the way up. They now say they do not care

about the men getting fifty dollars a week or more.

Mr. Mayer: Why not substitute section 2 in there of the general wholesale code?

Mr. Williamson: Section 2 of the general wholesale code?

Mr. Kittelle: That clause in practice is going to be worse for you than the one that we have here. It says:

"No employee whose full time weekly hours are reduced by less than twenty per cent shall have his or her full time salary reduced."

Assume you are reducing most of yours on an average of from forty-five down to forty. That is not twenty per cent. For, it means you have to maintain the wages of everybody, no matter how much they are getting.

With this clause, you only maintain the wages of people getting fifty dollars a week.

Mr. Mayer: Nobody gets over fifty dollars.

Mr. Kittelle: I do not think, for public hearing, as far as I am concerned, I do not think it makes much difference, but I would be rather inclined to think that the fifty dollars there might be of some help. When you attempt to start adjusting the wages of a man getting over fifty dollars, it begins to amount to some money, and if you do not have anybody above fifty dollars, it does not affect you. As far as the people above fifty dollars are concerned, you can reduce them.

Mr. Mayer: If you make that thirty-five dollars, I would

agree with you.

Mr. Kittelle: I do not see how we can do that. This represents a concession on the part of the labor board anyway. It used to be all wages had to be maintained.

Mr. Miller: The labor board is not paying the bill, though, are they?

Mr. Williamson: What do you want to do about the fifty dollars in there?

Mr. Mayer: I would rather take the article IV, section 2, out of the general wholesale code.

Mr. Williamson: Are you sure of that?

Mr. Faxon: I think section 7, if you could change the fifty dollars to thirty-five dollars ---

Assistant Deputy Merrell: I am afraid that can not be done.

Mr. Kittelle: Fifty dollars represents a concession. The general wholesale has no limit.

Mr. Mayer: Why put anything in. Let us leave it out.

Assistant Deputy Merrell: This is a better provision for you than the general wholesale.

Mr. Williamson: With this out, you would have to adjust wages all the way up the line.

Mr. Mayer: That is ---

Assistant Deputy Merrell: The reason that labor has done this, they realize they can get better compliance if they put

fifty dollars, or some figure higher than that, than just relying on the integrity of the manufacturer.

Mr. Maher: It is O. K. With me.

Mr. Williamson: I think it is better than to throw the minimum down. I think we would have more to adjust.

The next section is section 8. We have no comments on sections 8, 9, 10, or 11.

The next is article V, under the general heading of "General Labor Provisions."

Section 1, no comments.

Section 2 (a), no comments.

Section (b), no comments.

Section (c), no comments.

Now, section 3, no comments.

Section 4, no comments.

Section 5 and section 6, no comments.

The next is Article VI, "Organization, Powers and Duties of the Code Authority."

Gentlemen, it is quite evident, or was quite evident, at our various meetings, at the one in New York, and the one here this morning, that you were not altogether satisfied with the set-up of the organization of the code authority. The subject is open for discussion, gentlemen, on this side of the table.

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what we thought might be a basis for the setting up of the code authority.

Secretary Newcomb, have you got that memorandum?

Mr. Newcomb: The motion was that we recommend to the Administration that the temporary code authority be made permanent for one year. The temporary committee has been endorsed by the industry, and the endorsement carried with it the assent, this code might be submitted and signed. We therefore recommend that this committee be set up as the permanent code authority for a period of one year.

Assistant Deputy Merrell: Is that your whole recommendation?

Mr. Newcomb: Yes.

Mr. Williamson: And, that during that period a plan be worked out for the subsequent code authority.

Assistant Deputy Merrell: Mr. Dechert, what have you to say on that? Have you seen a code come up where the code committee would be a permanent code authority?

Mr. Dechert: How many letters came in signed?

Mr. Newcomb: About three hundred.

Mr. Dechert: How many were sent out?

Mr. Newcomb: Roughly, fifteen hundred.

Assistant Deputy Merrell: That authorization, Doctor Newcomb, was that the code committee should only serve as a temporary code authority.

Mr. Williamson: Or until one were elected.

Mr. Shapiro: There was one dissenting vote, which was my own, on this motion, and I based that on the thought that we only had about three hundred replies out of eleven hundred sent, which may not be the code authority that the entire industry wants.

I think it is our function to make regulations to appoint a code authority and to vote on it through the industry. I do not think it is proper for us to accept ourselves, or even put ourselves on the slate without the complete endorsement of more than the three hundred we received.

Assistant Deputy Merrell: I believe two things would happen, one that the N. R. A. would not accept it, and the second one that the industry would not accept it. I do not think we can have the application of the code authority, or rather, the election of the code authority, based on the way that has been suggested.

I would like to confer with Mr. Dechert on that. Do you see how that could get through?

I do not see how you can say that a committee be given the power to present a code to the Administration, and to assent to the code, and to act as a temporary code authority, or can be given the power to be the permanent code authority for a period of one year, as they request.

Mr. Dechert: I think it would be most extraordinary to

do it.

If it would delay the code though, in order to work out some system that would be satisfactory to all members, at least I think the Administration would be willing to appoint the present committee as a temporary code authority until it is worked out.

Assistant Deputy Merrell: And, as to the method of selection, I want to get into the code, if possible, to have the method of selection approved at the same time the code is approved.

We had this difficulty on the perfume cosmetic industry, and I could get no agreement of the trade. I mean, I found it necessary to have the method of selection worked out, after the code was approved. It takes two or three months to get the thing working.

This way, with package medicine, the method of selection has been approved with the code, and it is all ready to start now and elect a code authority.

Mr. Shapiro: Maybe you can clear up something which would aid us.

In Article VI, you say something about organizations that have inequitable restrictions, and further on you say that in the matter of voting alongside of each name shall be the association that the party represents.

Mr. Merrell: That is merely identification. I do not

think the Administration would insist that the trade association's name be put after the men.

Mr. Mayer: I think this would be all right, if you make it consistent, and that is on page 9 with the trade associations' affiliations who are eligible; with the trade associations who are eligible.

Assistant Deputy Merrell: What paragraph is that?

Mr. Shapiro: Paragraph (b), with the trade association, with the affiliations of the trade associations who are eligible and, over here, on page 10, section 3, each trade or industrial association who are eligible directly or indirectly.

Assistant Deputy Merrell: I see no reason why we can not take the trade association reference out.

Mr. Shapiro: Take it out in both places, then.

Mr. Kittelle: Take it out on (b).

Mr. Mayer: You have to take it out one place or the other.

Assistant Deputy Merrell: What Mr. Kittelle means is, you can not take it out of the clause which says inequitable.

Mr. Kittelle: Section 3 has to remain in as worded.

Assistant Deputy Merrell: I would suggest, in this method of selection ---

Mr. Kittelle: May I suggest that preceding the word "nominees", the clause "who shall be members of the trade" be inserted.

Mr. Brockmeyer: I was going to make the same suggestion, but the Administrator pointed out there that the wholesale drug affiliations of each nominee identify them as members of the trade.

Mr. Kittelle: That was not put in purposely, but can be if you want it. The reason we did not put it in was because sometimes code committees feel that they might want at some time or another to get on the code authority a man perhaps not actually engaged in the field at that time but who had been or was interested in it or knew its problems but we can put that in if you want it.

Assistant Deputy Merrell: What is the limitation you want?

Mr. Newcomb: I wanted to be sure this did not provide people could be nominated who were in other industries.

Mr. Kittelle: They would have to be members of the trade.

Mr. Williamson: Now, you have outlawed practically the only two associations in the wholesale drug industry that were in existence at the time these codes were being considered, because you say they had some inequitable provisions, but you can not outlaw the fact or fail to recognize the fact that in this industry there are different groups, of which I happen to represent one, and Mr. Mayer represents another, and Mr. Shapiro another.

Mr. Mayer: We are members of those groups. We do not represent them.

Mr. Williamson: We happen to be in those groups. I, personally, represent the group I am in. I do represent them. I may not be officially accepted so.

Assistant Deputy Merrell: You represent their point of view at least.

Mr. Newcomb: I do not represent my group here, nor do you represent your group here.

Mr. Williamson: Officially not, but actually I am representing them.

Under the present set-up a code authority may be elected, and most likely would be accepted, in which there was not a single representative from any group except the most powerful group in the industry. I am speaking in all frankness, the N. W. D. A. We want representation on that code authority, and so does Mr. Shapiro's group, and I claim and maintain we are entitled to a representation on that group and I go further than that and I think we should have equal representation because we are not representing volume of business; we are representing a method of doing business in an industry.

If you vote on this thing the way it is, there is not anything in the world to stop, except an Executive Order, or a mandate from God, to stop having the whole nine men elected out of that group.

Assistant Deputy Merrell: I would like to point out, Mr. Williamson, and call your attention to section 4 on page 11, which reads:

"Section 4. In order that the Code Authority shall at all times be truly representative of the trade and in other respects comply with the provisions of the Act, the Administrator may prescribe such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification in the method of selection of the Code Authority."

That is one thing. The second thing I refer you to is page 8, (b), the top paragraph. We inserted this, as I explained to you in my letter:

"(b) Not more than two (2) additional representatives of the trade to be appointed by the Administrator if, in his discretion, any group or interest in the trade is not adequately represented by the nine (9) representatives mentioned in paragraph (a) of this section, and to serve for one year or until their successors shall be appointed."

That provision is put in there for this reason: We will assume that the election occurs and the nine people are elected, and that some important group who should have a voice is not represented on that code authority. In this case, the Administrator, without disturbing the other nine people, could

appoint one or two people to the code authority.

Mr. Williamson: Suppose he appoints two; suppose we are the red headed stepchild left out. He appoints two or three on the code authority. That makes a code authority of eleven, of which we have the very powerful position of having two representatives only on a committee of eleven.

Mr. Schneider: There was quite a little discussion on that this morning. In looking around this room and sizing up the men who represent the different trade associations or affiliations, I felt, for the sake of harmony and satisfaction of everybody interested in the drug field, that we would allow this committee of nine to continue with, of course, the approval of the Administrator. You can look around here and see men representing the N. W. D. A., and Mr. Miller here, representing the drug sundry interests, people representing the allied interests in New York, and myself, representing no association, but known as the independent wholesale distributors. Just look us over; Mr. Williamson over there, and Mr. Krupp, and the others.

Assistant Deputy Merrell: But, Mr. Schneider, after all, the industry has given you the power, by its letters of authorization, to present the code and negotiate the code and so forth, and to act as a temporary code authority and conduct the election of the main code authority. They have conceded that much, but actually they have not voted on you as their code

authority because you have only heard from three hundred of them.

I think you yourself, the committee itself, will be making a great mistake if they go to a public hearing even suggesting that.

You have cumulative voting here. People in Mr. Williamson's group, if he is nominated, they know him and will probably say, "We want Lee Williamson on this code authority", and they will elect him.

You can not foresee what the results of this election will be.

Mr. Shapiro: You can not?

Assistant Deputy Merrell: No, you can not foresee what the results will be. I say, let us get the results, and then we will determine if it is representative, and if it is not, we will adjust it.

Mr. Williamson: They might nominate Williamson but not elect him.

Mr. Shapiro: The reason you can not foresee is the table of votes that says 151 to 300 employees have 117 votes, and most of that type voting would belong to one association, so you can easily foresee that the votes would come in so heavy you would not have to count them. Because of that, there should be a method of giving every group representation on the code authority.

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Mr. Mayer: I think this will clarify the whole thing. Under our letter of authorization that you wrote here for us to send out, it states, "and to act as a temporary code authority until such time as a permanent code authority can be selected."

Mr. Williamson: Is there anything further?

Mr. Mayer: We employ blank number of people.

Assistant Deputy Merrell: What is the last sentence in that letter?

Mr. Mayer: The last sentence is -- the last sentence is:

"This is to certify that the undersigned for and on behalf of the, name of your firm or company, a member of the wholesale drug trade, does hereby designate and authorized as a code authority these gentlemen, the nine members of this committee to be selected to represent the said trade before the National Recovery Administration in the preparation and submission of a code of fair competition for said trade and to make such revisions thereof before or after public hearing as in their judgment or in the interest of said trade and necessary to the approval of said code by the President of the United States, or the Administrator, for industrial recovery; and to assent on behalf of said trade to said code as finally drafted for approval and to act as a temporary code authority until such time as a permanent code authority can be elected.

We employ blank number of persons in our company." Signed with the name and firm.

Assistant Deputy Merrell: In the letter which accompanies that it said that this temporary code authority would have nothing --- on the second page, the last line, it is to be understood that the composition of this code committee has no bearing on the composition of the permanent code authority which will administer the code.

Mr. Kittelle: When it says, until such time as a permanent code authority can be elected, I think anyone would infer that as a reasonable time, and a year is too long.

Mr. Williamson: You have pushed out of the picture the only trade associations that are in the industry, but you can not put out of the picture the different branches of the industry, the division of the branches of the industry, and there are very distinctively several branches in the wholesale drug industry, namely, the service wholesaler, the cooperative wholesaler, and the semi, partially service wholesaler. Unquestionably you have those subdivisions in the industry, and they should be represented. Do you not fix that representation definitely?

Assistant Deputy Merrell: You have them in the perfumery and cosmetics, or rather, we tried to have them in that code and you said it was too complicated.

Mr. Williamson: The plan approved for the annual

selection by the associated manufacturers of toilet articles of one member, and the annual selection of another by the perfumery and cosmetics institute, and the selection of the third by the two members chosen by the association and the institute, and four members shall be elected to represent each of the following interests; so you have set up subdivisions of the industry.

Assistant Deputy Merrell: We tried to.

Mr. Williamson: Has not this gone through?

Assistant Deputy Merrell: Yes, that has been approved.

Mr. Williamson: You put that on the basis of the volume of the sales.

We think you would get a better representation of the industry if you put it on the number of employees and not weight or geometrically progress them.

Assistant Deputy Merrell: Those dollars and cents were weighted.

Mr. Williamson: Yes. Why do you have to weight it?

Assistant Deputy Merrell: You have to do one of two things, either have a straight nose vote, each company getting the same number of votes, regardless of size, or else you have to weight the ballot in order that the small fellow has a chance.

Mr. Williamson: If you safeguard the different divisions of the industry as to representation, then you can make your

voting any way you think would be an intelligent way, but the simpler you make it, the more votes you will get, and the better you will represent the whole industry. We feel that the service wholesalers should be represented on the code authority; the cooperative wholesalers should be; the partial service wholesalers should be, and that the drug sundries should be.

Now, as to the ratio of the representation, I think there should be equal representation, the same as the States are represented by Senators, but we feel there is so much opposition to that, that we will accept some other fair way or representation. No matter how the code authority is set up, so long as all the different branches are represented, there is not any group that can do an unfair act to another group because of the restraining hand of the Administrator.

Assistant Deputy Merrell: That is right.

Mr. Brookmeyer: Perhaps I might ask a question that will lead to further discussion that will develop the issue as it was presented this morning by asking, if you please, sir, why the provision in the code proposed under date of May 1st, which I shall read, has been discarded. I shall read it:

"In order that there shall not be more than three members of the code authority representing any one trade association, if the first six names on the list include more than three representatives of any one trade association, the first three

representatives of such trade association shall be declared elected", and so forth.

That is sufficient for the purpose of the point I desire to make.

Assistant Deputy Merrell: I followed Mr. Brookmeyer's minutes of the meeting held in New York in which they suggested that the code authority be elected on the basis which I tried to modify to meet ---

Mr. Newcomb: (Interposing) They did that by eliminating all references to trade associations. There is one place where that was discussed but was not done. There is one part where that was intended, but not done.

Mr. Brookmeyer: The dissatisfaction is due to the fact that there is no limitation placed on the election of the code authority, so as to safeguard these various groups, as identified by their respective trade associations. That is the apprehension, as I get it. The apprehension is that there is nothing in this method of electing the code authority to prevent ---

Assistant Deputy Merrell: (Interposing) Have you any other suggestions to make as to what limitation should be there, taking out trade associations? Would you say out of nine not more than four could represent companies that employed salesmen?

Mr. Brookmeyer: I was going to suggest this, Mr.

Administrator, without consulting my clients. You very well raised the point that it is impossible to consider the recommendations that the present sponsoring code committee selected as the sponsoring code authority, but is there anything impracticable or impossible or irregular in providing in the method of election of the code authority that this sponsoring committee, its membership, be submitted to the trade on a ballot giving the trade the privilege of substituting names?

Assistant Deputy Merrell: You would have to have additional nominations, I believe.

Mr. Shapiro: Here is a suggestion. The Administration selects a nominating committee, draws this selection from the various branches of the industry; for example, from the service wholesalers, the short line jobbers, drug sundries, cooperatives -- say they select a committee of four and this committee of four should represent a slate, a selection for the industry to vote on, and to have no more than a certain amount belonging to one individual group on this code authority. For example, you select one man, the Administration does, as a nominating committee. This committee selects its slate, trying to get a truly representative code authority on this slate for the industry.

Assistant Deputy Merrell: The trouble is, Mr. Shapiro, that the Administration -- that it is impossible for the Administration to know what particular individuals to select.

Mr. Shapiro: That is what the nominating committee knows.

Assistant Deputy Merrell: As this is now, your nine people do the nominations. You nominate twenty-seven people.

Mr. Mayer: Nominate ourselves and eighteen more.

Assistant Deputy Merrell: Now, on that nomination ballot you would nominate certain interests, probably, that might not be on your committee now.

Mr. Kittelle: You do not have to nominate eighteen more.

Mr. Shapiro: What do you think of the plan of the nominating committee to select the slate?

Assistant Deputy Merrell: Why not this committee to select the slate? The nomination list has to be approved by the administrative member of the code authority, and the administrative member of the code authority is going to see that the various interests in the industry are nominated on that ballot. He has to do that.

I say we are worrying about something that we do not know anything about.

Why not go ahead with it, and if the results are not fair to the industry, the Administration will not let that code authority stand.

Mr. Shapiro: There is no need for us nine to select the slate. We can have four select it, one from each body.

This body, as it is now constituted, if you took one from the service wholesalers and one from each of the other branches and have those four nominate a slate, you would have a truly representative group on that slate.

Mr. Kittelle: You have a check on the nominations made by this committee in the administrative member. If he sees that the committee has more on it of one group than of another and that they have made those nominations too many in one group, I believe he can then amend those nominations. He can approve them, or if he sees anything about them he does not like, he can amend them and then they go on the ballot as he amends them.

Mr. Shapiro: We can avoid that by immediately having the four nominees on the nominating committee select the slate that will be, with the cooperation of the Administration, acceptable to them.

Mr. Kittelle: You would have to have that approved the same way.

Mr. Shapiro: The nominating committee would really select a representative slate for the industry to vote on. The Administration could see beforehand whether there is too much representation for any one group before it even knew how the industry would vote on it.

Assistant Deputy Merrell: The Administration member will see the ballot before any vote is cast.

Mr. Shapiro: I am talking of the slate.

Assistant Deputy Merrell: This is the same thing.

Mr. Shapiro: For example, if you have three N. W. D. A. members on this slate, two F. N. D. A. members, two allied -- that is seven -- and two others; that, in my opinion, would be a truly representative slate and the Administration would accept it.

If they did not accept it, we could modify it before the slate goes to a vote.

Mr. Kittelle: That is exactly what will be done.

Assistant Deputy Merrell: Mr. Shapiro means that the nominating committee will only nominate nine members.

Mr. Shapiro: Yes.

Assistant Deputy Merrell: I do not think you can do that.

Mr. Williamson: What would prevent writing into this a sentence which would read, not more than blank numbers from any such subdivision of the wholesale drug industry? What is the objection to that?

Assistant Deputy Merrell: I do not object to anything. When you boil this thing down, there are only two sections in this code. One is the labor question and the other is the question of the election of the code authority. What I want is for you gentlemen, in conjunction with our views and restrictions, and what not, to work out the best possible method of electing a code authority, that will be representative of

the industry, to go to a public hearing on it and get the thing approved.

Mr. Williamson: What would be wrong with saying that not more than blank from any one subdivision of the wholesale drug industry shall be on the code authority, or there shall not be more than blank from any one subdivision?

Assistant Deputy Merrell: At one time I suggested to somebody, I think it was to you and Deoter Newcomb, that if it is possible to define these different branches of the different types of wholesalers, and I was told it is impossible to separate or define them unless you talk in terms of Federal Wholesale and N. W. D. A.

Mr. Williamson: You can define our group, cooperating under a cooperative plan in the wholesale drug distributing. I can give you a definition for our group.

Assistant Deputy Merrell: Can you give me a definition for yours, Mr. Mayer?

Mr. Mayer: Yes.

(Discussion off the record.)

Assistant Deputy Merrell: I would suggest, gentlemen, that the following change be made on page 5, where it says, "select a list of at least eighteen nominees" ---

Mr. Krupp: Would you have any serious objection to the suggestion of Mr. Williamson, limiting the number of a group on this committee?

Do you not think that would clarify the situation?

Otherwise, it stands to reason that one group would have the power. They will not in the initial committee, but with the votes they control through their size, naturally they will have the largest representation, and, in fact, might have all the representation.

Assistant Deputy Merrell: I think you are all unduly alarmed about this thing.

Mr. Krupp: I think so, too. But I think that would satisfy us all.

Assistant Deputy Merrell: I can say this to you, Mr. Merrell, and I am sure if I leave the N. R. A. tomorrow, the person handling wholesale drugs would be bound to carry out the same notions that I have about it, that if this code election is unfair and these various groups do not have some voice on the code authority, that he would recommend that it be opened again.

Mr. Krupp: We would not like to go to that extent. I would not like to go to them and ask that someone be taken off of it and someone of my group appointed.

Assistant Deputy Merrell: If the elections turned out that not one cooperative was elected ---

Mr. Krupp: That is how it would be, on account of the size of the house.

Assistant Deputy Merrell: I do not agree with that.

Mr. Krupp: It is only human to think that, from the majority of the business which they have ---

Assistant Deputy Merrell: Would not the cooperative people vote for the cooperative members on that committee?

Mr. Krupp: Yes, but their votes would be small in comparison to the other votes.

Assistant Deputy Merrell: If they have more employees, they are entitled to more representation.

Mr. Krupp: They, then, would have the entire representation.

Mr. Williamson: You do not suppose, when the ballots went out to the trade, that any member of the Federal Wholesale Association would vote for members in the N. W. D. A., nor would any member of the N. W. D. A. vote for a Federal nominee. They would not do it.

(Discussion off the record.)

Assistant Deputy Merrell: I would like to ask the committee; I have several suggestions I would like to put before the group.

One of them is that either you do not weight the ballots and have each wholesale house get the same amount of votes. That is one suggestion.

The second suggestion is that you put a limitation on the number that can be elected from definite groups, if they can be defined, or, if they can not be defined, from trade

associations. I suggest that the weighting in this draft that I gave you should be modified to read as follows: ---

Will you turn to the first page, or rather, to page 10, beginning, "5 or less"?

The following figures should replace the ones in the second column: 9 - 18 - 27 - 36 - 41 to 80 - 45 - 81 to 150 - 54 - 151 to 300 - 63 - more than 300 - 72.

I believe, Mr. Dechert, that is in line with the weighting of ballots that the Legal Division has followed.

Mr. Dechert: Yes, I have seen it in other codes.

Mr. Mayer: Look at your first draft.

Mr. Kittelle: In the first draft we exceeded what the Legal Division recommended and sticks by. That is a compromise and gives the small man a little better chance.

Mr. Brockmeyer: That, tied in with the suggestion of yours, limiting the number that might be elected on the code authority, affiliated with any trade association, might, I think, satisfy everybody. I think that would answer the criticisms.

Mr. Faxon: It would, if the figure is proper. You used the word "blank", right along.

Mr. Williamson: I would say four from any group.

Mr. Faxon: I want to work it so that there will be representation, but it must be fairly representative.

Mr. Williamson: You feel that the N. W. D. A. should

have the larger representation.

Mr. Faxon: Absolutely.

Mr. Williamson: I am willing to accept that. It is contrary to my other theory, but I will accept that.

Mr. Faxon: I want representation from every group, but, to keep it sound, you have to keep that in mind.

Mr. Williamson: You can give the N. W. D. A. the larger representation. I am not satisfied for you to have all the representation.

Mr. Dern: You can not get it. The N. W. D. A. can not be one hundred per cent of that committee.

Mr. Shapiro: The N. W. D. A. could elect everybody under this.

Mr. Dern: If they do, they get kicked out, and you put somebody else in.

Mr. Williamson: You do not kick out anybody. The Administrator would add two more.

Mr. Kittelle: Look at section 4 on page 11, which provides:

"Section 4. In order that the Code Authority shall at all times be truly representative of the trade and in other respects comply with the provisions of the Act, the Administrator may prescribe such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply

with the provisions of the Act, may require an appropriate modification in the method of selection of the Code Authority."

Mr. Newcomb: We have agreed to a 4 - 2 - 2 set-up, that it was equitable with the ninth man elected.

Mr. Williamson: I am agreeable to that.

Assistant Deputy Merrell: Why do you object to having a limitation of four in any trade association?

Mr. Mayer: How can you bring them in when there are inequitable restrictions?

Mr. Kittelle: We do not assume any trade associations in this industry have inequitable restrictions. You can mention them but not by name.

Mr. Mayer: How will you handle the nominations?

Mr. Kittelle: You are merely mentioning affiliation in trade association, not having anything to do with the election. You are merely recognizing the membership of an individual in an association.

Mr. Williamson: Just hall-marking the man.

Assistant Deputy Merrell: I would suggest, Doctor Newcomb, and I believe Mr. Mayer and other people said that the present committee would be all right, that the 4 - 4 - 2 basis was fair, and therefore, that we put a limitation in here that not more than four members of any trade association can be elected.

Mr. Williamson: I will agree to it.

Mr. Newcomb: On a committee of seven or nine?

Mr. Williamson: Nine.

Assistant Deputy Merrell: You said 4 - 2 - 3 on a committee of nine.

Mr. Newcomb: On a committee of eight.

Mr. Kittelle: The ninth has to be elected.

Assistant Deputy Merrell: They agreed to a four basis out of nine, and this carries that same idea out.

Mr. Miller: I move we accept that and try to work out on that basis.

Mr. Mayer: I refuse to have the name of the N. W. D. A. associations brought in, in any manner, shape, or form, in as much as it has inequitable restrictions. They have stated that in as much as I was a member of two trade associations, and officiating on this code authority, that I was not representing either one of those trade associations, which I wanted clarified.

I claim I am representing the entire industry.

Mr. Newcomb: How do you propose to indicate on this ballot affiliation with associations?

Assistant Deputy Merrell: The name of the association is put after the name, the same way -- we have a copy of a ballot here.

Mr. Kittelle: Mr. So-and-so, member of the such-and-such association.

Mr. Mayer: That brings the association in in a way which is illegal.

Mr. Kittelle: No, just indicates his relationship.

(Discussion off the record.)

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(After a brief discussion off of the record:)

Mr. Williamson: My position is this, that I prefer that each group or association have the same representation. That is my preference.

I realize that I can not get that, and therefore I am satisfied with the representation of each association or group being definitely stated, and the ratio of four, two and two, is satisfactory to our group, in lieu of the other representation.

Mr. Kittelle: We do not have to put the trade association membership on the ballot. It is not essential. You can say that no one trade association shall have more than four members of the code authority, and in the nominations no more in that than eight from any trade association shall be nominated.

You do not need to put the trade affiliations on the ballot, if you do not want to.

Mr. Williamson: All right. We do not care about that. It does not have to be on the ballot.

Mr. Miller: As long as the association seems to be the stumbling block ---

Mr. Williamson: It should be the stepping stone.

Mr. Miller: Could not the members of the different associations be identified under some of these outlines you have had before?

Assistant Deputy Merrell: If we can get a definition

of the difference between a service wholesaler and the other things, on the basis of the number of items they handle, or the way they finance their business or handle it, make your limitation that way ---

Mr. Williamson: Whom must this definition be satisfactory to?

Mr. Kittelle: To the trade, so that any given person can say, "I belong to this class, or that," just from a legal point of view.

What are we going to do? Go to each individual person and say that, "You are so-and-so"?

Mr. Shapiro: You only have to do it in rare instances, where it would not be the deciding evidence.

Mr. Brookmeyer: I think you were right and within the law and procedure and practice of the E. R. A., when, in (b) here, in the revised revision, on page 9, in making the limitation on the nominees, you use the language to submit twenty-seven nominations with the trade association affiliations, and I think that in now considering a limitation, you can be within the law and within the practice and procedure of the E. R. A., if you make a limitation using that language.

Mr. Kittelle: We could; surely we could.

Mr. Brookmeyer: I do not think there is any doubt about it.

Mr. Kittelle: It is perfectly within the law.

Well, what would be the matter with this now, if we should say ---

Assistant Deputy Merrell: May I say something?

Mr. Kittelle: Shoot.

Assistant Deputy Merrell: Can not we say, gentlemen, -- I will not attempt to say the number from each class, but we will say that so many shall be elected from the cooperative and mutual wholesalers and define that a little further, and so many will be elected from the wholesale houses who stock thirty-five thousand items or more?

Mr. Mayer: No.

Assistant Deputy Merrell: And so many shall be elected from the wholesale houses who stock less than thirty-five thousand?

Mr. Shapiro: You have the proper privilege of selecting certain members of the industry to a definite standard. You do not understand whether a man is a wholesale jobber or not, but there are certain people in the industry that could classify them.

Mr. Kittelle: As to their classification?

Mr. Shapiro: As a service wholesaler, or a sundry man, or a cooperative, and the mistakes that they would make would not amount to anything.

Mr. Newcomb: I think that you can settle this in section 4 by providing that the code authority shall be truly represen-

tative -- you can place some statements in there which will guarantee to any distinct groups in the drug industry representation. You have attempted to do it now, and maybe to make that stronger will satisfy all of us.

Mr. Mayer: I am willing to add this, "shall select a list of twenty-seven nominees, approved by the Administrator." I will let the Administrator select the whole bunch of nominees, if he wants to.

(Thereupon, there was an informal discussion off of the record.)

Mr. Mayer: I make this suggestion, that you make a note down here that a subsidiary or branch house shall be constituted as an individual wholesale drug house. That is to take care of houses like Mr. Rees's, where he has nine or ten.

Mr. Shapiro: I object to that.

Mr. Mayer: How are you going to handle it in any other way?

Are you going to rule that McKesson is one house? It will do you more harm than anybody else.

Mr. Shapiro: I think that two votes is sufficient for any one corporation.

Mr. Kittelle: If they are separately incorporated, they are separate members of the industry.

Mr. Mayer: I do not think that that is quite fair to my friend over there, because he has some that are not

separately incorporated. I think that they should be counted as separate houses.

Mr. Krupp: You can say the same about the McKesson houses.

Mr. Mayer: No. They are one incorporated individual.

Mr. Kittelle: I would like to raise one point, just to get this thing down to a specific problem.

Instead of barking all around the place, what would be the objection to saying that there shall be eight members of the industry elected by ballot, but by this method, not more than four of whom shall be a member of any trade association, and the ninth member shall be elected by the eight, which is more or less the way that this committee was formed?

Mr. Williamson: That is satisfactory to me.

Mr. Kittelle: We definitely can -- and Mr. Dechert has checked me on that -- mentioned trade associations as a general group, but without putting in any names.

Is there any objection to drawing up a method of selection on this same basis, just putting in the classification that there shall be not more than four members from any one trade association elected, and elect eight, and have the ninth elected by the group?

Mr. Krupp: That would mean that the one association would have five.

Mr. Kittelle: It might or it might not mean that. What

did it mean in this committee?

Mr. Krupp: I just wondered.

Mr. Williamson: It is sort of a compromise, I think. The committee agreed to bring in a gentleman who was in another group, to have the wholesale sundry industry represented.

Mr. Kittelle: I can not help but see the practical side and believe that undoubtedly we will get the same committee elected.

Mr. Miller: Could we do this? Would it be objectionable?

We all know that regardless of whether you are identified with an association or not, where we sit. Why not arbitrarily say that you are going to select three members or four members from the National Wholesale Drug Association, or service wholesalers, or in some other way indicate those two members from the Federal, or cooperative, and three members from the independent concerns, which would throw this class into one.

Mr. Kittelle: The only trouble with that is that we can not name the associations, and we find difficulty in defining the various groups.

If we can do it by saying that not more than four from any trade association, and then if the independents or some other group turn out not to get their proper representation,

we still have this other clause to take care of that.

Mr. Mayer: Suppose that we may nominate nine?

Mr. Kittelle: (To Mr. Dechert:) Can they nominate the number they want?

Mr. Dechert: Yes.

Mr. Mayer: We will nominate nine, and put in any additional names that they want on the thing.

Mr. Williamson: Either nominate nine or nominate eighteen, the other to be selected by the men that are now on the committee.

That would mean that you would have from your association twice as many men to select from than we would have from our association.

Mr. Mayer: We do not want that many.

Mr. Williamson: At the same time, it would be keeping a majority.

Mr. Doerr: Why do you not make it one apiece?

Mr. Faxon: Why not make it eighteen?

Mr. Mayer: Do you want to have a committee of nine, instead of eleven?

Mr. Williamson: Eleven.

Mr. Kittelle: You provided a committee of nine.

Mr. Williamson: With eighteen nominees, you are shoving people down their throats.

Mr. Mayer: Suppose that you have twenty-seven nominees,

and not over six from any trade association?

Mr. Kittelle: That is a large number.

Mr. Mayer: Then you have them to vote for.

Mr. Kittelle: You get twenty-seven and people will not know whom to vote for.

Mr. Doerr: Eighteen is a better number.

Mr. Mayer: And you will not have more than six from any trade association.

Mr. Kittelle: Eighteen nominees, with not more than six from any trade association.

Mr. Williamson: That is all right.

Mr. Kittelle: We have gotten that far.

Now, do you want a weighted vote? We have already gotten down to nominating them.

Mr. Mayer: I do not know what those last figures mean. You are penalizing Harry Krupp.

Mr. Krupp: That does not bother me.

Mr. Williamson: So they are all on an equal voting basis.

Mr. Mayer: You are penalizing him a bit. He has three hundred employees, and he is going to be assessed on the number of employees, and he is only entitled to cast two votes.

Mr. Kittelle: That is a scaling down process.

Mr. Mayer: Give the small fellow a better break.

Mr. Kittelle: Now, some of the small fellows will not

need to worry.

Mr. Mayer: It will be the number of wholesale employees actually engaged in the wholesale drug business?

Mr. Kittelle: That is right.

Mr. Mayer: A subsidiary or branch house will be regarded as a separate house for voting?

Mr. Kittelle: If separately incorporated, or, if there is no objection, we can make it so when separately operated.

Mr. Mayer: Make it separately operated.

Mr. Doerr: That ought to be revised to read that way, that each individual unit has a vote. It does not make any difference whether it is a partnership or a corporation, or what not.

Mr. Kittelle: You mean each unit that is geographically separated from another?

Mr. Doerr: Each individual wholesale house. You get it specifically and definitely.

Mr. Shapiro: Even though owned by the same party?

Mr. Kittelle: I do not know. It all depends on what the committee wants to do on that point.

Mr. Williamson: Naturally I am in favor of that.

Mr. Shapiro: According to your table, we have votes here by the number of employees. Somebody owns three houses and he can aggregate his employees. They do not have to be separate.

Mr. Kittelle: Of course, it gives him an advantage if he separates them.

Mr. Shapiro: There should not be an advantage here. There is sufficient advantage now.

Mr. Kittelle: There is a reason behind separating them, and that is that each one of them is a separate establishment and has its own particular problems.

Mr. Shapiro: Isn't that a regional problem? When it comes to the regional vote of the state, that question then comes up.

Mr. Kittelle: We are interested in the regional aspect here, to a certain extent.

Mr. Shapiro: A man has his own house, and if he has forty, he can aggregate his employees.

Mr. Kittelle: Do we want cumulative voting to remain? If we want it, we will leave that.

(There was an informal discussion off of the record.)

Mr. Kittelle: Shall we limit when the final election returns come in? Shall we limit each trade association to not more than four?

Mr. Williamson: I thought that that is what we had already decided.

Mr. Kittelle: I am just checking it up now.

Mr. Shapiro: Why, you say each trade association. I would add to that, "each trade association or interlocking

association."

Mr. Kittelle: What do you mean by that?

Mr. Mayer: I will not agree to any more than a minimum of six.

Mr. Kittelle: All right. We have six nominations from any one trade association, and four in the final election. I think we have everything settled except the voting system.

Mr. Doerr: What is this question?

Mr. Kittelle: I will go through the method of election. The first thing is that this committee is going to nominate eighteen nominees.

Mr. Doerr: Right.

Mr. Kittelle: Not more than six of whom shall be members of any trade association.

Mr. Doerr: Right.

Mr. Kittelle: Now, that ballot goes out to the trade, after being approved by the Administration member, and the trade votes by cumulative voting, and the ballots come back and the ballots are counted.

Now, I want to check on this. There shall not be more than four elected from any one trade association.

Mr. Doerr: We do not subscribe to that, because you can not here take a commitment for the United States.

Mr. Kittelle: What do you mean, take a commitment for the United States?

Mr. Doerr: We can not take a commitment for all the cities of the United States.

Mr. Kittelle: We are going to have a public hearing on this thing.

Mr. Doerr: You can limit the number of men that go on the ballot, or you can not limit the number of men that go on the ballot?

Mr. Williamson: Why can you not limit the number of men that go on the ballot?

Mr. Doerr: Because I want to speak personally for the wishes of Warner James.

Mr. Shapiro: That is the reason we want to limit it, so that if Warner James is elected, and for other N. W. D. A. members, they can not say that they want to be guided by what this code authority has passed.

Mr. Doerr: I am not going to tell any wholesaler that only so-and-so can be on this board.

Mr. Kittelle: Well, you are telling them a lot of things through this code. After all, that is what your code committee is for.

Mr. Mayer: I absolutely will not approve of N. W. D. A.'s name being mentioned in this, in any manner, shape, or form.

Mr. Kittelle: We will not use it.

Mr. Newcomb: What you say or do, as I understand Mr. Doerr's suggestion, is this, that when you count your ballots

you may throw out someone who has received more votes than someone else who, by your suggestion, would be made a member of the committee.

Mr. Kittelle: That is right. They said that fifth member down the line would be thrown out and somebody below him would take his place.

Mr. Doerr: You can not stuff the ballot box.

Mr. Faxon: In principle, that is what we did in the temporary code. We limited ourselves to four.

Mr. Doerr: When you say seven, that is true.

Mr. Faxon: Now you are talking about nine, and seven and nine are two different figures.

Mr. Doerr: This would be eleven.

(Thereupon, there was an informal discussion off of the record.)

Mr. Kittelle: Suppose that we select eight instead of nine, and let the ninth be elected by the eight, and say that in electing eight, not more than four shall be members of a trade association.

Mr. Shapiro: Shall be selected by the Administration?

Mr. Mayer: No, I will not agree to that.

(After informal discussion off of the record:)

Mr. Kittelle: You are willing to elect eight, with not more than four from any trade association? Have we gotten this far?

Mr. Mayer: Then the Administrator is going to elect two more?

Mr. Kittelle: He may. He does not have to. It depends on how the eight or nine come out.

Mr. Mayer: Here happened to be 219 or 220 wholesalers. They are the oldest wholesalers, some of them, in the United States. They are affiliated with two or three different associations in the drug field. Those members have, by the number of returns sent in, as we could get them from 220 manufacturers, have seventy-five per cent of the wholesale volume. They have the big number of employees, and they will have to pay the cost on an employee basis, and you can not restrict them as to the number that you want to have.

Mr. Krupp: What are you going to do with me, with 300 employees? It means that if you do not put in some limitations, I will not have any representation, now will the group to which I belong. You want to do justice to me.

Mr. Mayer: I want to say this: As I have stated before, I want to say that that weighted average is entirely unfair for you.

(Thereupon, there was an informal discussion off of the record.)

Mr. Kittelle: Here is another idea: Now about nominating eighteen, not more than six of whom shall be from any trade association -- that has been agreed to -- and then do not have

any limit when the vote comes in from any trade association, but continue to have the two which the Administrator can appoint?

Mr. Krupp: The whole number would come from one group.

Mr. Kittelle: If they did, they would be thrown out.

Mr. Krupp: They would control the entire number of votes.

Mr. Kittelle: If they did, the thing would be thrown out.

Mr. Krupp: It would be a controlled force.

(Thereupon, there was another informal discussion off of the record.)

Mr. Shapiro: How about certain groups without associations?

Mr. Mayer: Make it any way you want to.

The only equitable way I know of is to put up twenty-seven names and elect nine.

Mr. Shapiro: Give each one a vote?

Mr. Mayer: No. There are nine of them elected. If they are not representative, the whole thing is thrown out. I say, any time you have not a representative vote, it shall be thrown out.

Mr. Newcomb: How about not more than six shall be service wholesalers?

Mr. Kittelle: O. K.

Can you define them?

Mr. Mayer: You know what that means.

(Thereupon, there was another informal discussion off of the record.)

Mr. Kittelle: How about limiting it to five out of nine?

I will tell you: This matter of representation of the code authority is not as important as it appears to be.

Mr. Mayer: I am willing to sit down with this group and select twenty-seven names, or eighteen names. It does not make any difference which.

(At this point there was another informal discussion, off of the record.)

Mr. Kittelle: The question of the method of selection of the code authority has been postponed, and the committee will decide this in its own meeting later on.

Mr. Mayer: We decided five out of nine, here a minute ago.

I move that it be not over five out of any trade association.

(Again, by direction of the presiding officer, the discussion went off of the record.)

Mr. Kittelle: Now we are on section 3 of article VI, on page 10. That is a standard clause.

Mr. Williamson, you were discussing the clauses as we went along.

Mr. Williamson: (Reading:)

"Section 3. Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall (1) impose no inequitable restrictions on membership, and (2) submit to the Administrator true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the Administrator may deem necessary to effectuate the purposes of the Act."

Mr. Faxon: We passed to that next page.

Mr. Newcomb: I believe we concluded consideration this morning of page 11.

Mr. Williamson: We stopped on page 11. I do not know how far we got down there.

Mr. Faxon: We finished page 11. Mr. Brockmeyer said that it was all standard.

Mr. Williamson: Then we go to page 12, regarding Powers and Duties.

"Section 7. Subject to such rules and regulations as may be issued by the Administrator, the Code Authority shall have the following powers and duties, in addition to those authorized by other provisions of this Code:

"(a) To insure the execution of the provisions of this Code and to provide for the compliance of the trade with the

provisions of the Act.

"(b) To adopt by-laws and rules and regulations for its procedure.

"(c) To obtain from members of the trade such information and reports as are required for the administration of the Code. In addition to information required to be submitted to the Code Authority, members of the trade subject to this Code shall furnish such statistical information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act to such Federal and State agencies as he may designate; provided that nothing in this Code shall relieve any member of the trade of any existing obligations to furnish reports to any Government agency. No individual report shall be disclosed to any other member of the trade or to any other party except to such other governmental agencies as may be directed by the Administrator.

"(d) To use such trade associations and other agencies as it deems proper for the carrying out of any of its activities provided for herein, provided that nothing herein shall relieve the Code Authority of its duties or responsibilities under this Code and that such trade associations and agencies shall at all times be subject to and comply with the provisions hereof."

Mr. Krupp: That first sentence, "to use such trade associations and other agencies as it deems proper for the

carrying out of any of its activities", and so forth; will you explain that?

Mr. Kittelle: It means that if the code authority has a statistical job to do, it may go to some statistical agency to have that done, or it might utilize the services of a trade association for some purpose that it had in mind.

Mr. Krupp: Thank you.

Mr. Mayer: Let me read that for you.

"(e) To make recommendations to the Administrator for the coordination of the administration of this Code with such other codes, if any, as may be related to or affect members of the trade.

"(f) (1) It being found necessary to support the administration of this Code, in order to effectuate the policy of the Act and to maintain the standards of fair competition established by this Code, the Code Authority is authorized, subject to the approval of the Administrator:

"(a) To incur such reasonable obligations as are necessary and proper for the foregoing purposes and to meet such obligations out of funds which shall be held in trust for the purposes of the Code and which may be raised as hereinafter provided.

"(b) To submit to the Administrator for his approval, subject to such notice and opportunity to be heard as he may deem necessary;

"First: An itemized budget of its estimated expenses for the foregoing purposes, and

"Second: An equitable basis upon which the funds necessary to support such budget shall be contributed by members of the trade.

"(c) After such budget and basis of contribution have been approved by the Administrator, to determine and secure equitable contribution as above set forth by all members of the trade, and to that end, if necessary, to institute legal proceedings therefor in its own name.

"(g) Only members of the trade complying with the Code and contributing to the expenses of its administration as provided in paragraph (1) hereof shall be entitled to participate in the selection of the members of the Code Authority or to receive the benefit of its voluntary activities or to make use of any emblem or insignia of the National Recovery Administration.

"(h) To recommend to the Administrator any action or measures deemed advisable, including further fair trade practice provisions to govern members of the trade in their relations with each other or with other trades or industries; measures for industrial planning, and stabilization of employment; and including modifications of this Code which shall become effective as part hereof upon approval by the Administrator after such notice and hearing as he may specify.

"(i) To appoint a Trade Practice Committee which shall meet with the Trade Practice Committees appointed under such other codes as may be related to the trade for the purpose of formulating fair trade practices to govern the relationships between employers under this Code and under such other codes to the end that such fair trade practices may be proposed to the Administrator as amendments to this Code and such other codes.

"(j) To provide appropriate facilities for arbitration, and subject to the approval of the Administrator, to prescribe rules of procedure and rules to effect compliance with awards and determinations.

"(k) To supervise, subject to the approval of the Administrator, the setting up with regional areas, of regional committees for the purpose of assisting in the administration and enforcement of this Code within such regional areas.

"(l) To appoint representatives to serve on any Drug Industry Coordinating Council which may be established to be composed of representatives from the various code authorities governing codes which are directly related to the Drug Industry, and to act as a planning and coordinating agency, and as an agency for the stabilization of employment, for the entire Drug Industry."

Mr. Krupp: Those powers and duties of the committee show where the preponderance of the vote of the committee has

the power, because they can determine things that might be more favorable to one group.

Mr. Shapiro: No doubt about it.

Mr. Krupp: That is a point where an equal representation is necessary.

Mr. Kittelle: On the other hand, you have to remember that if one group has a larger financial interest in the industry, it is entitled to a certain amount of consideration. Now, they can not go too far, with what you just said.

Mr. Krupp: Go too far? It is human nature to look after your own interest first.

Mr. Kittelle: Exactly.

Mr. Krupp: And this code is supposed to overcome a lot of the selfishness of the past. I look on the N. R. A. as a wonderful movement to correct the selfish and unfair trade practices of the past, and it can not be done by a majority vote. It has to be done on an equitable basis, and I think that if the Administration just considers that, while we are in the minority in capital and in business, that we do serve, and, as such, we feel that we are entitled to representation on the board that has for its objects these particular things.

Mr. Kittelle: If you went over these, one by one, you would probably find that there would be no undue hardship that could be done to any group by a majority interest on the code authority, in that there is a clause back there a little ways

in which the Administrator can stay any action of the code authority.

The thing is so surrounded with safeguards that, while the position of the N. R. A. is to let industry govern itself as much as possible after a code has been approved, nevertheless there are a lot of safeguards, and it is for that very reason, that it is human nature for a person to act in his own interest most of the time.

Mr. Krupp: And the majority may be wrong.

Mr. Kittelle: If the majority are wrong, they do not rule on the code authority. That is one of the differences between a code authority and an ordinary committee or other type of body. The majority on the code authority do not rule when they are wrong.

Mr. Krupp: Is it not only human to think that the Administrator will be influenced by the majority?

Mr. Kittelle: No.

On the other hand, with Mr. Darrow's review board, and the other safeguards which the Administration has, it is safe to assume that the Administration is going to err on the other side.

Mr. Krupp: I am perfectly satisfied if it is unselfish. That is what I am hoping for.

Mr. Mayer: Mr. Administrator, if you are through with that point, I would like to come to rule 12.

Mr. Kittelle: Do you want to read all of the fair trade practices?

Mr. Mayer: I would like to skip over that.

Mr. Newcomb: According to our notes, they are all identical; not one of them has been changed.

Mr. Kittelle: They are the standard trade practices. They have not been changed up to 12.

Mr. Mayer: In No. 12, at the last meeting, Mr. Williamson suggested some changes here, in which I concurred, and I think this is the way the committee agrees on that in the New York meeting.

It was moved by Michaels and seconded by Krupp that this rule be rewritten and accepted as follows:

"The Code Authority shall cause to be formulated an accounting system and methods of cost finding and/or estimating capable of use by all members of the trade. After such system and methods have been formulated and approved by the Administrator, full details concerning them shall be made available to all members of the trade. Thereafter, no member shall sell or offer to sell any goods included under this Code at a price below the replacement cost, plus wages, as determined by the Code Authority.

"This rule shall be effective on approval by the Administrator."

Mr. Krupp: That was not passed; only tentatively passed.

Mr. Mayer: I beg your pardon. I should say that that was tentatively accepted. Mr. Shapiro wanted to consider it further.

Mr. Doerr: When Mr. Weinberg was here this afternoon, he told us that the committee had approved the paragraph to go into the obtaining of cost, and that has already passed the industrial review board. He said it was on his desk, and if we would come over there, he would give us a copy of it.

If they have already prepared a paragraph to go into the codes, we had better get a look at it.

Mr. Newcomb: Absolutely.

Mr. Shapiro: The practice of consignment by wholesalers to retailers, I think we ought to take up in the code committee.

Mr. Mayer: I think that is a matter for the code authority to handle.

Mr. Shapiro: There are a lot of these chain stores that sell on memorandum to certain agencies, which affects our business.

Mr. Doerr: The same way with the cash discounts. I think that we ought to have a limited time for a cash discount.

Mr. Shapiro: This is the time to have a discussion on that.

Mr. Faxon: The permanent code authority should work that

out.

Mr. Shapiro: No; this is an unfair trade practice.

Mr. Doerr: That is the line of authority to find out; where does it lie?

Mr. Mayer: Whatever formula they have got, I think that temporarily, while you are putting in a form of cost accounting, there ought to be some temporary provision whereby the code authority, with the approval of the Administrator, could rule that you could not sell below replacement cost, plus an amount determined by the code authority, and approved by the Administrator, to cover wages.

Mr. Kittelle: What are we going to do about the wage provision? That is one of the things that we passed up.

Mr. Mayer: I hope to see Mr. King on that tomorrow.

Mr. Faxon: You probably will not find Mr. King here tomorrow.

(Thereupon was another informal discussion off of the record.)

Mr. Shapiro: It is an unfair trade practice for any wholesale druggist to sell on memorandum to a retail druggist.

Mr. Kittelle: The Legal Division will hold you up somewhat on that. You are speaking of consignments?

Mr. Shapiro: I can sell tomorrow on a memorandum.

Mr. Kittelle: I say, there is a standard form that goes in codes on that. It is not in here. The code committee

can put it in if it wants to. It reads:

"No member of the industry shall ship upon consignment, except upon continued demand or orders."

That is to prevent a person from consigning to somebody without asking his permission to do so.

Mr. Shapiro: No; that is to prevent the industry from losing business that would go to a chain store house. You Walgren's for example; they appoint distributors in various towns, cigar stores, shoe stores, and everything else, and they sell on memorandum drug merchandise which affects the regular wholesaler.

Do you follow my point?

Mr. Doerr: We can not put in our code something that is going to stop the manufacturer.

Mr. Shapiro: This is our code. They are not manufacturers, but wholesalers.

Mr. Faxon: They are manufacturers, though.

Mr. Shapiro: But they come under the wholesale drug trade. They have a regular wholesale drug warehouse, and they sell direct to the retail trade.

Mr. Doerr: You are right.

Mr. Kittelle: That is up to the code committee.

Mr. Shapiro: And your drug store on the corner loses that business.

Either he is a wholesaler or a manufacturer.

Mr. Kittelle: It is up to the code committee to write that in, if they want it.

Mr. Doerr: Let me ask you one more question. What is the general set-up of regional districts in codes?

Mr. Kittelle: Well, there can be various kinds. I am not very familiar with them. As you know, we have just one code that has that, and that is retail drugs, and that is set up by Congressional districts.

Mr. Shapiro: Congressional, or State?

Mr. Kittelle: Congressional.

Mr. Doerr: Five hundred and forty-eight. It seems to me that if we limit the wholesale drug code to a comparatively small number, it is an advantage. A set-up, something on the basis of the Federal Reserve districts, of which there are thirteen, or some such number as that, would be sufficient, would it not, for our code?

Mr. Kittelle: It is entirely up to you.

Mr. Doerr: What is the practice in other lines?

Mr. Kittelle: There is no practice that can be laid down definitely. It is fixed up in individual cases. You take a code like the retail drug code; they needed to have Congressional districts.

In your code, if you decide that you do not need anything as big as that, you can make it by states, or by Federal Reserve districts.

It is entirely up to you. The set-up has to be approved by the Administrator, and he approved anything that is reasonable, and you do not have to make it any given size at all. There are no rules at all.

Mr. Doerr: Then each one of these regional boards has its own committee and chairman?

Mr. Kittelle: They have their local code authority with their chairman and their by-laws.

Mr. Doerr: But they are in no way represented on the national board?

Mr. Kittelle: That is up to you. If you wanted to, after you got up a local arrangement, you could have it geographically.

Mr. Doerr: None of that has to go into the code?

Mr. Kittelle: No, not now. Put it in as an amendment.

Mr. Williamson: Straighten it out after the code authority is operating.

Mr. Kittelle: We have enough trouble getting one code authority.

Mr. Williamson: That is why it is so necessary that one group should not be especially represented on the code authority, because all of these things have to be worked out.

Mr. Doerr: Is there any good precedent that there would be of the breakdown of the United States?

Mr. Kittelle: To my knowledge, the only one that I know

about at all is the retail drug code, which breaks it down by Congressional districts. As I understand it, the code authority appointed a committee in each Congressional district, with a representative druggist, and they formed the districts, and the same thing could probably be done with the Federal Reserve districts.

Mr. Doerr: You can either set it up by Department of Commerce districts, twenty, or Federal Reserve, thirteen. It seems to me it would be logical ---

Mr. Kittelle: You want to take existing districts, if possible?

Mr. Doerr: Yes.

Mr. Newcomb: Mr. Chairman, I think that we did have, earlier, a clause that the National Code Authority should, under the supervision of the Administrator, organize regional code authorities.

Mr. Kittelle: It is still in there.

Mr. Newcomb: I am looking for it and I am unable to find it.

Mr. Kittelle: It is on page 14 (k).

Mr. Newcomb: That is right.

(After an informal discussion, off of the record, as to the time at which to meet tomorrow morning:)

Mr. Kittelle: Suppose that we meet tomorrow morning at 9:30, in this room.

(Whereupon, at 6:30 o'clock p. m., an adjournment was taken until Saturday morning, May 19, 1934, at 9:30 o'clock a. m., as above indicated.)

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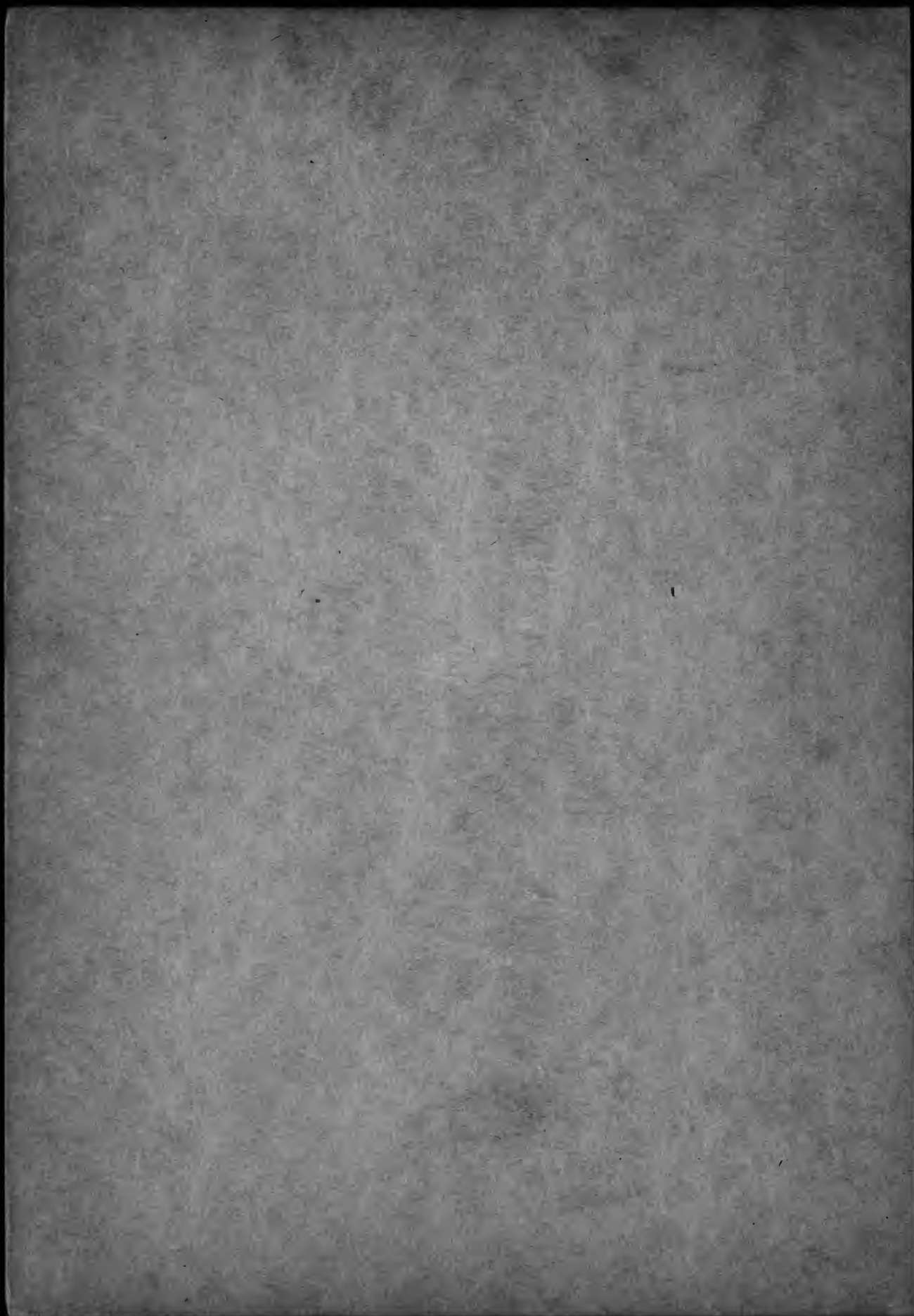
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